SUPERIOR COURT RULES

GOVERNING DOMESTIC RELATIONS PROCEEDINGS

I. SCOPE OF RULES – ONE FORM OF ACTION.

Rule 1. Title and scope of rules.

(a) Title. -- These Rules may be known and cited as the Rules Governing Domestic Relations Proceedings of the Superior Court of the District of Columbia, and may be cited as the Rules Governing Domestic Relations Proceedings or as SCR-Dom. Rel.

(b) Scope of Domestic Relations Rules. -- These Rules govern the procedure in all suits of a civil nature in the Family Division of the Superior Court of the District of Columbia within D.C. Code § 11-1101(1)-(8), (10) and (11), whether cognizable as cases at law or in equity including:

(1) Actions for divorce from the bond of marriage and legal separation from bed and board, including proceedings incidental thereto for alimony, pendente lite and permanent, and for support and custody of minor children;

(2) Applications for revocation of divorce from bed and board;

(3) Actions to enforce support of any person as required by law;

(4) Actions seeking custody of minor children, including petitions for writs of habeas corpus;

(5) Actions to declare marriages void;

(6) Actions to declare marriages valid;

(7) Actions for annulments of marriage;

(8) Determinations and adjudications of property rights, both real and personal, in any action referred to in this rule;

(9) Proceedings for reciprocal support under D.C. Code §§ 30-301 through 30-324 [§§ 46-701 through 46-724, 2001 Ed.];

(10) Proceedings to determine paternity of any child born out of wedlock.

These rules shall be construed to secure the just, speedy and inexpensive determination of every action.

(c) Applicability of Civil Rules. -- When a civil claim is raised with a domestic relations action, either in a complaint or counterclaim, the Superior Court Rules of Civil Procedure shall apply to

such claim. The judicial officer who is assigned to the domestic relations action may, as a discretionary matter, bifurcate the civil claim for trial purposes or may certify the civil claim to the Civil Division for adjudication under existing Civil Rules at any time during the pendency of the domestic relations case. The judicial officer may also refer the civil claim for any type of alternative dispute resolution, irrespective of the litigation status of the domestic relations case.
(d) Procedure not otherwise specified. -- If no procedure is specifically prescribed by these Domestic Relations Rules, the Superior Court Rules of Civil Procedure shall apply to the extent and in the manner permitted by the judicial officer assigned to the case.

COMMENT
The Domestic Relations Rules are often similar to the corresponding civil rules. Where the nature of domestic relations practice calls for a different procedure, the rule's variance is noted in the comment.

Any civil claim that is raised in a domestic relations action that is assigned to a hearing commissioner must be adjudicated according to the Rules of the Superior Court and administrative orders of the Chief Judge that govern the powers of hearing commissioners and their authority to certify matters elsewhere in the court system.

Where alternative dispute resolution is concerned, the judicial officer may determine that such resources would speed the resolution of the civil claim even while discovery is ongoing with respect to the specific domestic relations allegations or claims. Paragraph (c) is designed to encourage timely resolution of all claims that may arise within a single action.

Pursuant to paragraph (d), where no procedure is specifically prescribed by the domestic relations rules, current Superior Court civil rules may be applied.

Rule 2. Form of action and definitions.

(a) There shall be 1 form of action to be known as "domestic relations action".

(b) As used in these rules, the terms listed below are defined as follows:

(1) Affidavit. -- A written declaration or statement of facts confirmed by the oath of the party making it.

(2) Clerk. -- Clerk of the Domestic Relations Branch of the Superior Court.

(3) Legal holiday. -- The term legal holiday includes New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the District of Columbia.

(4) Minor. -- Any person under the age of 18, and, in cases involving the right to child support,

any person under the age of 21.

(5) Oath. -- Unless otherwise provided by statute or rule, whenever a document is required to be signed under oath, the affiant may either:

(A) sign the following statement: "I solemnly swear or affirm under criminal penalties for the making of a false statement that I have read the foregoing paper and that the factual statements made in it are true to the best of my personal knowledge, information and belief" or

(B) make the foregoing statement before an officer authorized to administer an oath or affirmation, including a notary public, who shall certify in writing to having administered the oath or taken the affirmation.

Whenever these Rules require that a person take an oath, an affirmation may be accepted instead.

COMMENT
Subparagraph (b)(5)(A) of this rule permits the use of an unsworn statement where an oath or affidavit is required by the Domestic Relations rules, unless otherwise provided. In accordance with D.C. Code § 22-2405 (False Statements), the statement contains a warning clause which indicates that making a false statement will subject the person to criminal liability.

II. COMMENCEMENT OF ACTION: SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS.

Rule 3. Commencement of action.

The following Domestic Relations actions under D.C. Code § 11-1101 are commenced by filing a complaint or counterclaim with the Court:

(1) Actions for divorce from the bond of marriage and legal separation from bed and board, including proceedings incidental thereto for alimony, pendente lite and permanent, and for support and custody of minor children;

(2) Applications for revocation of divorce from bed and board;

(3) Actions seeking custody of minor children, including petitions for writs of habeas corpus;

(4) Actions to declare marriages void;

(5) Actions to declare marriages valid;

(6) Actions for annulments of marriage;

(7) Determinations and adjudications of property rights, both real and personal, in any action

referred to in this Rule;

(8) Proceedings for reciprocal support under D.C. Code §§ 30-301 through 30-324 [§§ 46-701 through 46-724, 2001 Ed.].

Proceedings to determine paternity of any child born out of wedlock are commenced by filing a petition with the Court.

A Domestic Relations action pursuant to D.C. Code § 11-1101(3) to enforce support of any person may be initiated by either complaint or petition. Proceedings to modify support or custody pursuant to D.C. Code § 16-911 may be brought by motion in the underlying case, if any, or by complaint.

COMMENT
This Rule provides for 3 divisions of actions within D.C. Code § 11-1101 and specifies the method or methods by which an action is commenced in each area. Those actions traditionally in the Domestic Relations Branch continue to be initiated by filing a complaint. All actions to obtain or modify custody of a child, other than those made for custody pendente lite, or in conjunction with a neglect or intrafamily case, must be initiated by complaint in the Domestic Relations Branch; custody cannot be determined pursuant to motion in a paternity and support action. A petition will be used for actions in which a greater speed of determination is desirable. In local support cases there is an option to proceed either by complaint or by petition. In these local support cases Corporation Counsel will represent most of the persons seeking support pursuant to D.C. Code § 16-2341 and will use the petition form of commencement to handle the high volume of cases. However, the classic complaint is also available should private counsel (representing complainant where a public support burden is not incurred or threatened) prefer that form of commencement.

Rule 4. Process.

(a) Issuance.
(1) Summons. -- In cases in which a Domestic Relations action is initiated by complaint, a completed summons with copies for each defendant named in the complaint shall be delivered to the Clerk at the time the complaint is filed, except actions for reciprocal support under D.C. Code § 11-1101(10). If reissued, separate, or additional process is required, a completed summons for such process shall also be delivered to the Clerk. The Clerk shall record the date of filing and return all summonses to the plaintiff or the plaintiff's agent for service of process by special process server, mail, by the Marshal or in any manner set forth in paragraph (c) of this Rule. In cases where a post-judgment motion is filed (1) after the appearance of counsel of the party to be served has been terminated pursuant to SCR-Dom. Rel. 101(e)(4), or (2) 60 or more days after judgment and the party to be served was not represented by counsel at the time of the entry of judgment, the motion shall be accompanied by a summons and served pursuant to paragraph (c) of this Rule.

(2) Notice of hearing and order directing appearance. -- In cases in which a Domestic Relations

action is initiated by petition, a Notice of Hearing and Order Directing Appearance, with copies for each named defendant or individual whose attendance is otherwise required, shall be filed with the Clerk. A Notice of Hearing and Order Directing Appearance shall bear the name and seal of the Court and the title of the action. It shall command the person to whom it is directed to appear on a date and at a time specified therein. The Clerk shall set the matter for hearing and deliver all such notices for service to the petitioner or the petitioner's agent. Service shall be made by special process server as provided for in subparagraph (c)(1) of this Rule, by the Marshal, or in any other manner authorized by an applicable statute, rule or order of the Court.

(3) Orders to show cause. -- In proceedings in which an order to show cause is required or allowed by the Court or by statute, a completed order, with sufficient copies for each defendant or other individual to be served, shall be filed with the Clerk and delivered for service by the moving party or the moving party's agent. Service shall be made by special process server as provided for in subparagraph (c)(1) of this Rule, by the Marshal, or in any other manner authorized by applicable statute, rule or order of the Court.

(b) Summons: Form. -- The summons shall be signed by the Clerk, be under the seal of the Court, contain the name of the Court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any (otherwise the plaintiff's address), and the time within which these Rules require the defendant to respond, and shall notify the defendant that in case of the defendant's failure to do so action can be taken against the defendant for the relief demanded in the complaint. When, under SCR-Dom. Rel. 4(e), service is made pursuant to a statute or Rule of Court of the District of Columbia, the summons or notice, or order in lieu of summons shall correspond to the requirements of the statute or Rule.

(c) Summons: How served. -- Service of process shall be made in one of the following ways which may, at the plaintiff's election, be attempted either concurrently or successively:

(1) By any competent person 18 years of age or older who is not a party to the suit. Proof of service shall be made under oath and specifically state each of the following: The caption and number of the case; the special process server's name, residential and business addresses, and the fact that the process server is at least 18 years of age; the date, time and place at which service was effected and on whom it was effected; and if service was effected by delivery to a person other than the party named in the summons, then specific facts from which the Court can determine that the person to whom process was delivered meets the appropriate qualifications for receipt of process set out in paragraph (d) of this Rule.

(2) By mailing a copy of the summons and complaint to the defendant by registered or certified mail and filing with the Clerk the signed return receipt attached to an affidavit which shall specifically state each of the following: The caption and number of the case; the date when the summons and complaint were mailed and by whom; and, if the return receipt does not purport to be signed by the party named in the summons, then specific facts from which the Court can determine that the person who signed the receipt meets the appropriate qualifications for receipt of process set out in paragraph (d) of this Rule. Service shall be deemed made as of the date the return receipt was signed, or if that date is not indicated, the date stamped by the U.S. Postal Service upon delivery.

(3) By the Metropolitan Police Department pursuant to D.C. Code § 13-302.1 [§ 13-302.01, 2001 Ed.].

(4) By the Marshal.
(5) By publication pursuant to D.C. Code § 13-336 or by posting pursuant to D.C. Code § 13-340(a).

(6) In any manner authorized by paragraph (e) of this Rule.

(7) By written acknowledgment or waiver of service signed by the person to be served, under oath before a notary.

(8) In any other manner authorized by applicable statute.

(d) Personal service: Notice of hearing and order directing appearance, order to show cause and summons. -- In cases within SCR-Dom. Rel. 4(a)(2) and (3) above, involving service of a Notice of Hearing and Order Directing Appearance or an Order to Show Cause, service shall be made upon the defendant, respondent or other named person by delivering to that individual personally a copy of the petition along with the Notice of Hearing and Order Directing Appearance or the Order to Show Cause, unless otherwise ordered by the Court upon a showing of good cause.

In cases within subparagraph 4(a)(1) of this Rule, the summons and complaint shall be served in one of the following ways:

(1) Upon an individual other than a minor or an incompetent person, by delivering the service copies of the summons and complaint to the individual personally or by leaving them at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then living there or by delivering the service copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process.

(2) Upon a minor or an incompetent person, by serving the service copy of the summons and complaint in the manner prescribed by the law of the District of Columbia or of the state in which the service is made.

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering the service copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by and in accordance with law to receive service of process.

(4) Upon a defendant of any class referred to in subparagraph (d)(1) or (3) of this Rule, by any other means prescribed by the law of the District of Columbia.

(e) Service outside the District of Columbia. -- Whenever an applicable statute or Rule of Court provides for service of process upon or notice to a party outside of the District of Columbia, service and proof of service may be made under the circumstances and in the manner prescribed

in the statute or Rule.

(f) Service by publication. -- When service by publication is authorized by the Court, publication shall be in at least one legal newspaper or periodical of daily circulation for the prescribed time in addition to any other newspaper or periodical specifically designated by the Court. Publication shall be proved by affidavit of an officer or agent of the publisher stating the dates of publication with an attached copy of the document as published. For purposes of this Rule, a legal newspaper or periodical of daily circulation shall mean a publication designated by the Court that is (1) devoted primarily to publication of opinions, notices and other information from the courts of the District of Columbia, (2) circulated generally to the legal community, and (3) published at least on each weekday that the Superior Court is in session.

(g) Service by posting. -- Upon a showing that publication pursuant to paragraph (f) would impose a substantial hardship, the Court may order publication by posting or in any other manner prescribed by D.C. Code § 13-340(a).

(h) Territorial limits of effective service.

(1) All process may be served anywhere within the territorial limits of the District of Columbia, and, only when authorized by a statute or by these Rules, beyond the territorial limits of the District.

(2) Persons who are brought in as parties pursuant to SCR-Dom. Rel. 19 may be served in the manner stated in subparagraphs (d)(1)-(3) of this Rule at all places outside the District that are not more than 100 miles from the Superior Court; and persons required to respond to an order of commitment for civil contempt may be served at the same places.

(i) Alternative provisions for service in a foreign country.

When the applicable law referred to in paragraph (e) of this Rule authorizes service upon a party in a foreign country, it is also sufficient if service is made:

(1) By any applicable, internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) If there is no applicable, internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or

(B) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(C) unless prohibited by the law of the foreign country:

(i) upon an individual, by delivery to the individual personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or

(ii) by any form of mail requiring a signed receipt, to be addressed and mailed to the party to be served; or

(iii) as directed by order of the Court.

Service under (C)(i) and (C)(iii) above may be made by any person who is not a party and is not less than 18 years of age or who is designated by order of this Court or by the foreign court. On request, the Clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign court or officer who will make service.

(j) Proof of service. -- Except where service has been waived, proof of service shall be made in one of the following ways:

(1) If service is made within the United States, proof shall be made to the Court in accordance with the time limits in paragraph (1) of this Rule.

(2) If service is made in a foreign country, proof may be made in accordance with the time limits of paragraph (l) of this Rule, or by the law of the foreign country, or by order of the Court. If such service is made by any form of mail requiring a signed receipt, proof of service shall include a receipt signed by the addressee or other evidence of personal delivery to the addressee satisfactory to the Court, and, if the return receipt does not purport to be signed by the party named in the summons or notice, then specific facts from which the Court can determine that the person who signed the receipt meets the appropriate qualifications for receipt of process set out in paragraph (d) of this Rule.

Failure to make proof of service does not affect the validity of the service.

(k) Amendment. -- At any time in its discretion and upon such terms as it deems just, the Court may allow any process or proof of service to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process was issued.

(l) Time limit for service. -- Within 60 days of the filing of the complaint, the plaintiff must file proof of service of the summons, the complaint and any order directed by the Court to the parties at the time of filing. The proof shall be filed as to each defendant who has not responded to the complaint. Prior to the expiration of the foregoing time period, a request may be made by praecipe to extend the time for service. The praecipe shall include a certificate of good faith efforts to complete service by the attorney. Upon presentation of the request and certification the Clerk shall re-issue a summons for one additional 60 day period. If time in excess of the 120 days is required the party may file a motion for additional time. Failure to comply with the requirements of this Rule shall result in the dismissal without prejudice of the complaint. The Clerk shall enter the dismissal and shall serve notice of it on all the parties entitled to such notice.

COMMENT
Subparagraph (a)(2) of this Rule provides for the use of a Notice of Hearing and Order Directing Appearance (NOHODA) in cases initiated by petition. Pursuant to SCR-General Family H, this process is signed by the Clerk of the Division and has the same force and effect as a civil subpoena. In cases seeking to establish paternity, D.C. Code § 46-206(b) permits personal service of the NOHODA by a combination of first class and certified mail. Such service is not, however, a sufficient basis for issuance of a bench warrant for failure of the defendant to appear.

Paragraph (i) incorporates the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, and other applicable international agreements on service of process. The applicability of an international agreement on service of process in a foreign country should be checked before other methods of service are attempted.

Where a party has been granted leave to proceed in forma pauperis, the 60-day time period in which proof of service of process must be filed under paragraph (l) will start to run at the time the summons is issued by the Clerk. See SCR-Dom. Rel. 54(f). For waiver of prepayment of costs, including filing fees, see SCR-Dom. Rel. 54(f).

Rule 4-I. Service by publication. [Deleted].

COMMENT
SCR-Civil 4-I has been deleted since its requirement is already covered in SCR-Dom. Rel. 4(j).

Rule 5. Service and filing of other pleadings and papers.

(a) Service: When required. -- Except as otherwise provided in these Rules, every order required by its terms to be served, every pleading subsequent to the original complaint or petition, every paper relating to discovery required to be served upon a party unless the Court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, and similar paper shall be served upon each party. Any pleading or motion asserting a new or additional claim for relief filed after a default has been entered pursuant to SCR-Dom Rel 55(a) against any party shall be served upon the party in default in the manner provided for service of summons in SCR-Dom. Rel. 4.

(b) Service: How made.
(1) Whenever under these Rules service is required or permitted to be made upon a party represented by an attorney of record whose appearance is not deemed to be terminated pursuant to SCR-Dom. Rel. 101(e)(4), the service shall be made upon the attorney unless service upon the party is ordered by the Court. Except as provided in subparagraph (b)(2) of this Rule, service upon the attorney or upon a party shall be made by delivering, transmitting by facsimile machine, or mailing a copy to the attorney or party at the attorney's or party's current address, if known. Delivery of a copy within this Rule means: Handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or

the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then living there. Service by mail or facsimile machine is complete upon mailing or transmission, respectively. This Rule shall not require a facsimile machine to be maintained in the office of an attorney or party. In the event of a dispute concerning service by facsimile machine, the burden of proof is upon the party transmitting the paper by facsimile machine to prove that the transmission was successful.

(2) Any post-judgment motion filed (1) after the appearance of counsel of the party to be served has been terminated pursuant to SCR-Dom. Rel. 101(e)(4), or (2) 60 or more days after judgment and the party to be served was not represented by counsel at the time of the entry of judgment, the motion shall be served in the manner provided for service of summons in SCR-Dom. Rel. 4.

(c) Proof of service. -- Proof of service of papers required or permitted to be served, other than those for which a method of proof is prescribed elsewhere in these Rules or by statute, shall normally be made by affixing a certificate of service to the paper to be served and filing the certificate with the paper. The certificate of service shall state the date and manner of service, and be signed by a member of the Bar of this Court or a party, if not represented by counsel.

In matters requiring a different method of proof of service or when a party elects to make proof of service by an alternative method, it may be by written acknowledgment or waiver of service signed by the person to be served, by affidavit of the person making the service, or by other proof satisfactory to the Court. Such proof of service shall be made in accordance with SCR-Dom. Rel. 4.

The Court may at any time allow the proof of service to be amended or supplied, unless to do so would result in material prejudice to a party. Failure to make proof of service will not affect the validity of service.

(d) Filing. -- All papers after the complaint or petition required to be served upon a party, for which the proof of service is a certificate of service, shall be filed with the Court within 7 calendar days after service; however, the Clerk shall not accept for filing deposition transcripts, interrogatories, requests for documents, requests for admission, and answers and responses thereto except as set forth below. The party serving such a discovery paper (e.g. a set of interrogatories or a request for production of documents) or noticing a deposition must, however, file with the Court a CERTIFICATE REGARDING DISCOVERY which shall indicate the title of the discovery paper served and the date on which it was served. The requesting party must retain the original discovery paper, and must also retain personally, or make arrangements for the reporter to retain, in their original and unaltered form, any deposition transcripts which have been made at the party's request. Such discovery papers and deposition transcripts must be retained until the case is concluded in this Court, and the time for noting an appeal or petitioning for a writ of certiorari has expired, or any such appeal or petition has been decided. Discovery papers and deposition transcripts may be filed, without leave of court, if they are appended to a motion or opposition to which they are relevant and may otherwise be filed if so ordered by the Court sua sponte or pursuant to motion.

When proof of service is by acknowledgment or waiver of service or by affidavit of the person

making service the paper may be filed with the Court prior to the filing of the proof of service.

Where neither proof of service nor a responsive pleading has been filed, the Court shall take no action on the merits of a paper. The Court may impose sanctions for failure of a party to file a paper within the time limits of this paragraph.
(e) Filing with the Court defined. -- The filing of pleadings and other papers with the Court as required by these Rules shall be made by filing them with the Clerk, except that the judicial officer may permit papers to be filed with the judicial officer, in which event the judicial officer shall note thereon the filing date and forthwith transmit them to the office of the Clerk. On the date of the filing of any motion or any paper related to a motion (i.e., an opposition to a motion, memorandum of points and authorities, related exhibits or proposed order), the party filing such motion or paper shall deliver a chambers copy thereof to a depository designated by the Clerk of the Court for receipt of such papers by the assigned judicial officer. If the original document has been mailed, the chambers copy may be mailed to chambers. No pleadings or papers shall be delivered to the judicial officer's chambers unless the assigned judicial officer so orders.

COMMENT
Pursuant to paragraph (a), if a new or additional claim is asserted against a party in default, that party must be served in the manner provided for service of summons in SCR-Dom. Rel. 4. Paragraph (b)(2) requires that service of post-judgment motions also be made by summons pursuant to SCR-Dom. Rel. 4 where the appearance of counsel of the party to be served has been terminated, or where the party was not represented by counsel and 60 days has elapsed since the judgment. Paragraph (d) specifies the time within which papers must be filed with the Court and provides that discovery papers or deposition transcripts shall not be filed unless relevant to a motion or opposition or authorized to be filed by order of the Court. Paragraph (e) requires that any party filing a motion, or any paper related to a motion, hand-deliver a copy of such motion or paper to the chambers of the judicial officer assigned to the case unless the original paper has been mailed, in which instance the courtesy copy can likewise be mailed. Note, however, that original papers shall not be filed with a judicial officer, unless expressly permitted by a Court order, oral or written.

Rule 5-I. [Deleted].

Rule 5-II. [Deleted].

COMMENT
SCR-Civil 5-II has been deleted since there are no veterans estates in Family Division.

Rule 6. Time.

(a) Computation. -- In computing any period of time specified by these Rules, or by Court order, or by any applicable statute, the following shall apply:

(1) Computation of the specified time period shall begin on the day after the operative act, event,

or default;

(2) The last day of the specified time period shall be included in the computation unless: (A) it is a Saturday, Sunday, or legal holiday; or (B) the act to be done is the filing of a paper in Court, and the last day of the specified time period is a business day when the office of the Clerk is closed for all or part of the day. If the last day is one specified under subparagraph (A) or (B) above, then the time period extends until the end of the next day which is not so specified;

(3) When the specified time period is 10 days or fewer, Saturdays, Sundays, and legal holidays within that time period shall not be included in the computation. Accordingly, for the purposes of these Rules, periods of 10 days or fewer shall be computed by business days and periods over 10 days shall be computed by consecutive calendar days.

(b) Extension of time. -- When an act is required to be done or allowed to be done by a party at or within a specified time period, either by these Rules, or by notice or order of the Court, the Court may at any time in its discretion: (1) order an extension of the specified time period upon oral or written motion made before the expiration of the original specified time period or an earlier extension; or (2) notwithstanding the expiration of the specified time period, permit the act to be done by the party upon oral or written motion and for good cause shown; however, the Court may not extend the time allotted to a party to take any action if such extension is not in accordance with SCR-Dom. Rel. 52(b), 59(b) and (d), and 60(b), and the conditions stated in them.

(c) Additional time after service by mail. -- Whenever a party has the right to act or is required to act within a specified time period after service of a notice or other paper upon the party, if the notice is by regular first class mail, then the party shall have three additional days, separately computed pursuant to paragraph (a) of this Rule, to act. For the purpose of this Rule service by facsimile transmission is not service by mail.

COMMENT
Pursuant to paragraph (a), if a pleading is served on the 10th day of the month, the first day of the applicable time period is the 11th day of the month. If the pleading was served by mail, paragraph (c) permits three additional business days to be added to the specified time period after the initial period has been computed pursuant to paragraph (a). *See Wallace v. Warehouse Employees Union No. 730*, 482 A.2d 801 (D.C. App. 1984). For example, if the specified time period ended on Saturday, the 10th day of the month, the operative due date would become Monday, the 12th, which is the next business day. If paragraph (c) is applicable, the three additional days extends the prescribed time period to Thursday the 15th. The same computation applies when an order or judgment is rendered outside the presence of the parties and notice is mailed pursuant to SCR-Dom. Rel. 77(b). Id.

Rule 6-I. [Deleted].

III. PLEADINGS AND MOTIONS.

Rule 7. Pleadings; Motions; Stipulations.

(a) Pleadings.
The following pleadings are allowed: a complaint or petition and an answer; a counterclaim as provided in SCR-Dom Rel 13 and a reply to a counterclaim. All such pleadings shall be signed under oath by the party in whose behalf the pleading is filed. No other pleading shall be allowed, except that the Court may order a reply to an answer.

(b) Motions and other papers.
(1) Motions. (A) Generally. -- With the exception of motions made in open court, or otherwise with leave of the Court, every petition or motion to the Court shall be in writing and filed with the Clerk. Every motion shall state clearly its object and the facts on which it is based or the reasons for the relief sought. If a motion is consented to by all affected parties, that fact shall be indicated in the title of the motion, e.g., "Consent Motion to Extend Time for Filing Opposition." A party may request an oral hearing by endorsing at the bottom of the party's motion or opposition, above the party's signature, "Oral Hearing Requested"; but the Court in its discretion may decide the motion without a hearing. Each motion shall be accompanied by the specific points and authorities to support the motion. The points and authorities shall, where appropriate, contain a discussion of the application of the legal authorities to the facts. All citations to cases decided by the United States Court of Appeals for the District of Columbia Circuit shall include the volume number and page of both U.S. App. D.C. and the Federal Reporter. The statement of points and authorities shall be captioned as such and placed either on a separate paper or below all other material including signature, on the last page of the motion. It shall be a part of the record. With each motion there shall also be filed and served a proposed order for the Court's signature which shall contain a list of all persons with their current addresses to whom copies of the Court's order should be sent.
(B) For temporary alimony, temporary maintenance, temporary support, temporary custody, and contempt. -- Motions for temporary alimony, temporary maintenance, temporary custody of minor children, and contempt shall be made under oath, and proof of service may be by certificate of service. If with a motion for contempt, the movant wishes to invoke the Court's power to issue a bench warrant, the motion shall be filed without a certificate of service and personally served with a Notice of Hearing and Order Directing Appearance. Motions for temporary child support shall be made under oath and, in lieu of being filed with a certificate of service, may be personally served with a Notice of Hearing and Order Directing Appearance in accordance with SCR-Dom. Rel. 4(a)(2).

(C) To enlarge a decree of legal separation. -- A motion to enlarge a decree of legal separation under D.C. Code § 16-905(b) shall be supported by an affidavit of essential facts and served in the manner of an original complaint and summons.

(D) For approval of priority for writs of attachment. -- In cases of attachment (under D.C. Code § 16-577) before or upon a judgment, order or decree of this Branch for the payment of any sum for the support or maintenance of a spouse, or former spouse, or children, where priority over any other execution is desired, application for such priority shall be by written motion.

(2) Oppositions. -- A statement of opposing points and authorities shall be similarly filed and

served within 10 days after the date of service of the original motion or such further time as the Court may grant. If a statement of opposing points and authorities is not filed within the prescribed time the Court may treat the motion as conceded. If a statement of opposing points and authorities is filed, the motion shall be treated as submitted unless an oral hearing is requested and granted by the Court.

(3) Form.
(A) The Rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these Rules. All motions shall be signed in accordance with SCR-Dom. Rel. 11.

(B) The Clerk shall not accept for filing any motion which is not in accordance with this Rule.

(c) Stipulations. -- A stipulation shall be in writing and signed by the parties or their attorneys, or made at a reported hearing, or made at a recorded deposition.

(d) Hearing. -- If the judicial officer assigned to the case determines to hold a hearing on a motion, that judicial officer shall give to all parties appropriate notice of the hearing and may specify the matters to be addressed at the hearing. Unless otherwise permitted by the judge, 10 minutes will be allowed each side at the hearing of a motion. If a pending motion is resolved by counsel, the movant must immediately notify the Court by telephone.

(e) Order. -- Notwithstanding that a proposed order was submitted with the motion as provided in subparagraph (b)(1)(A) of this Rule, counsel prevailing at oral argument shall, unless otherwise directed by the Court, within 5 days after the Court has ruled on any motion submit a proposed order in accordance with the Court's ruling, having previously transmitted a copy thereof to opposing counsel.

COMMENT
Paragraph (a) of this Rule lists the pleadings which are permissible in a domestic relations action; use of demurrers, pleas, and exceptions for insufficiency of a pleading are no longer allowed. Where a party has requested child support in the complaint, rather than a motion, a Notice of Hearing and Order Directing Appearance will be issued and a hearing will be held on that issue within 45 days; no motion is necessary. D.C. Code § 46-206. Paragraph (b)(1)(A)'s requirement that motions be in writing except when made in open court or otherwise with leave of the Court is meant to leave open the possibility, at the Court's discretion, that motions be made by telecommunication. With regard to subparagraph (b)(1)(B), *see Richardson v. Richardson*, 276 A.2d 231 (D.C. App. 1971), which makes personal service of motions for contempt unnecessary. However, if a party wishes to invoke the Court's power to issue a bench warrant for failure of a party to appear at a contempt or temporary child support hearing, the motion must be personally served with a Notice of Hearing and Order Directing Appearance. [Note that although D.C. Code § 46-206(b) defines personal service of process in a paternity case to include a combination of first-class and certified mail, such service is not a sufficient basis for issuance of a bench warrant for failure of the defendant to appear.] In addition, no hearing is contemplated under subparagraph (b)(1)(C), although the subparagraph does require that the motion to enlarge a decree of legal separation be served in the same manner as an original summons and complaint.

Rule 7-I. [Deleted].

Rule 8. General rules of pleading.

(a) Claims for relief. -- A claim for relief, whether an original claim or a counterclaim, shall contain (1) a short and plain statement of the factual and legal grounds upon which the Court's jurisdiction depends, unless the Court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim, including appropriate facts, showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief or remedy the pleader seeks. Alternative, inconsistent, or multiple relief or remedies, whether legal or equitable, may be demanded.

(b) Defenses; form of denials. -- A party responding to a claim for relief shall admit or deny each statement or averment in the adverse party's claim for relief and shall state in short and plain terms any defenses to the claim. If a party is without knowledge or information sufficient to form a belief as to the truth of a statement or averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the statements or averments denied. If a statement or averment is not admitted in full, the party shall specify so much of it as is true and shall deny only the remainder. Alternative, inconsistent, or multiple defenses, whether legal or equitable, may be raised.

(c) Affirmative defenses. -- In responding to a pleading, a party shall set forth affirmative defenses, including accord and satisfaction, arbitration and award, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, laches, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense.

(d) Effect of failure to deny. -- Statements or averments in a pleading to which a response is required are deemed admitted when not denied in the responsive pleading. Statements or averments in a pleading to which no response is required or permitted shall be taken as denied or avoided.

(e) Consistency. -- A party may set forth 2 or more statements of a claim or defense alternately or hypothetically, either in 1 count or defense or in separate counts or defenses. When 2 or more statements are made in the alternative and 1 of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of 1 or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or equitable grounds. All statements shall be made subject to the obligations set forth in SCR-Dom. Rel. 11.

(f) Construction of pleadings. -- All pleadings shall be so construed as to do substantial justice.

Rule 9. Pleading special matters.

(a) Capacity. -- It is not necessary to aver the capacity of a party to sue or be sued, the authority of a party to sue or be sued in a representative capacity, or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the Court. A party who desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity shall do so by specific negative statement or averment, with particularity.

(b) Fraud, mistake, condition of the mind. -- In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other conditions of mind of a person may be averred generally.

(c) Conditions precedent. -- In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) Official document or act. -- In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with the law.

(e) Judgment. -- In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and place. -- For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

Rule 9-I. [Deleted].

COMMENT
SCR-Civil 9-I has been deleted, since verifications are not applicable to Family Division, nor is it felt that affidavits need be spelled out in manner specified.

Rule 10. Form of pleadings, motions and other papers.

(a) Stationery. -- Pleadings, motions and other papers shall be on opaque white paper, approximately 11 inches long and 8 1/2 inches wide, without a back or cover, and fastened at the top.

(b) Caption; names of parties; locational information. -- Every pleading, motion or other paper shall contain a caption setting forth:

(1) The name of the Superior Court of the District of Columbia Family Division Domestic Relations Branch;

(2) The title of the action, which shall include: (i) in the complaint, petition and answer, the

names and residence addresses of all parties; (ii) in pleadings other than the complaint, petition and answer, it is sufficient to state the name of the first party on each side with an appropriate indication of other parties;

(3) The case number;

(4) The name of the pleading, and, if a request for child support is made in the pleading, the inscription "ACTION INVOLVING CHILD SUPPORT" immediately below the name of the pleading;

(5) Where necessary to avoid confusion, the name or names of the party or parties on whose behalf the pleading or other paper is filed;

(6) If the case has been assigned to a specific calendar or a single judicial officer, the calendar number or the judicial officer's name shall appear below the file number;

(7) A party who has a reasonable basis to fear harassment or harm to the party or the party's family from disclosure of the party's residence address shall not be required to state the address provided that the party substitutes the name and address of the party's attorney or a third person willing to accept service copies for the party and in care of whom such service copies may be sent. A paper which has a substituted address shall be clearly marked to indicate that such a substitution has been made. In using a substitute address a party shall be deemed to have certified that the party may be notified of court proceedings and receive service copies of papers at that address. Except as modified by praecipe filed with the Court and served upon the parties pursuant to SCR-Dom. Rel. 5, the names, addresses, and telephone numbers represented in the pleading, motion, or other paper shall be deemed conclusively correct and current.

(8) The last paragraph of a party's initial pleading shall either (1) identify the court and docket number of any prior or pending action based on or including the same claim or subject matter, or (2) state that there are no such cases.

(c) Signing of pleading, motion or other paper. -- Every pleading, motion or other paper shall be signed in accordance with SCR-Dom. Rel. 11. Below the signature, the paper shall contain: (i) if the party is represented by counsel, the name, office address, telephone number, fax number, if any, and District of Columbia Bar number of the attorney, (ii) if the party is not represented by counsel, the name, full residence address, and telephone number of the party by whom the paper was filed, or a substitute name, address and telephone number if a substitution has been made pursuant to subparagraph (b)(7) of this Rule.

(d) Paragraphs. -- Each claim or defense shall be made in a separate paragraph. The contents of each paragraph shall be limited as far as practicable to a statement of a single set of circumstances.

(e) Adoption by reference; exhibits. -- Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion or other paper. A copy of any written instrument which is an exhibit to a pleading, motion or other paper is a part

thereof for all purposes.

(f) Nonconformance with above. -- A pleading, motion or other paper not conforming to the requirements of this Rule shall not be accepted for filing.

COMMENT
Subparagraph (b)(7) of this Rule allows a party to use a substitute address on pleadings where the party fears that disclosing a residence address will pose a risk of harassment or harm to the party or his or her family. A party who uses a substitute address will be deemed to have certified that the party may receive notice of court proceedings and papers at that address.

Rule 10-I. [Deleted].

Rule 11. Signing of pleadings, motions, and other papers; sanctions.

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper. A name affixed by a rubber stamp shall not be deemed a signature. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass, embarrass, or cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed in violation of this Rule, the Court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.

COMMENT
In recognition of the potential for unnecessary embarrassment of persons involved in the Domestic Relations proceedings, this Rule has been amended to permit the Court to impose sanctions where a party's pleading, motion or other paper is interposed with the intention of embarrassing another party.

Rule 12. Defenses and objections -- When and how presented -- By pleading or motion -- Motion for judgment on the pleadings.

(a) When presented. The defendant shall serve an answer within 20 days after the service upon the defendant of: (1) the summons and complaint, except when service is made under SCR-Dom Rel 4(e) and a different time is prescribed in the applicable statute or rule of court; or (2) a petition and notice of hearing and order directing appearance or complaint and order to show cause pursuant to SCR-Dom. Rel. 4(d); provided, however, that the filing of such answer shall not relieve the defendant from the obligation to appear in Court on the day set forth in the notice or order, unless otherwise ordered by the Court. A plaintiff shall serve a reply within 20 days of the service upon the plaintiff of an answer containing a counterclaim, or as otherwise ordered by the Court.

(b) How presented. Every defense, in law or fact, to a claim for relief in any pleading shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) Lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) [Omitted], (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under SCR-Dom. Rel. 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with 1 or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in SCR-Dom. Rel. 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by SCR-Dom. Rel. 56.

(c) Motion for judgment on the pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in SCR-Dom. Rel. 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by SCR-Dom. Rel. 56.

(d) Pretrial hearings. The defenses specifically enumerated (1)-(7) in paragraph (b) of this Rule, whether made in a pleading or by motion, and the motion for judgment mentioned in paragraph (c) of this Rule shall be heard and determined before trial on application of any party, unless the Court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for more definite statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before filing the responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the Court is not obeyed within 10 days after notice of the order or within such other time as the Court may fix, the Court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these Rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the Court's own initiative at any time, the Court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of defenses in motion. A party who makes a motion under this Rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this Rule but omits therefrom any defense or objection then available to the party which this Rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subparagraph (h)(2) hereof on any of the grounds there stated.

(h) Waiver or preservation of certain defenses.

(1) A defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in paragraph (g), or (B) if it is neither made by motion under this Rule nor included in a responsive pleading or an amendment thereof permitted by SCR-Dom. Rel. 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under SCR-Dom. Rel. 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under SCR-Dom. Rel. 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action.

(i) Non-appearance of parties. If at the time set for hearing of any motion, there is no appearance by a party, the Court may treat the motion as submitted, withdrawn or conceded by the non-appearing party, and rule thereon.

Rule 12-I. [Deleted].

Rule 13. Counterclaim.

(a) Compulsory counterclaims. -- A party shall state as a counterclaim any claim which at the time of serving a responsive pleading, or thereafter in accordance with paragraph (e) of this Rule, the party has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the Court cannot acquire jurisdiction. The claim need not be stated as a counterclaim if (1) at the time the action was commenced the claim was the subject of another pending action, (2) the opposing party initiated the suit by attachment or other process by which the Court did not acquire jurisdiction to render a personal judgment on the opposing party's claim, and the pleader is not stating any other counterclaim pursuant to this Rule, or (3) the claim is not within the jurisdiction of this Court.

(b) Permissive counterclaims. -- A party may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim if such counterclaim is within the jurisdiction of the Court.

(c) Counterclaim exceeding opposing claim. -- A counterclaim may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) Counterclaim maturing or acquired after pleading. -- When a claim which otherwise would be a compulsory counterclaim under paragraph (a) of this Rule either matured or was acquired by a party after serving a responsive pleading but prior to trial, the claim shall be stated as a counterclaim by supplemental pleading pursuant to SCR-Dom. Rel. 15(d). If, upon motion of any party, the Court determines that litigation of the counterclaim in the current proceeding will result in substantial prejudice to any party, it may continue the proceeding for trial on all the

claims or order a separate trial of the counterclaim. Any other claim which either matured or was acquired by a party after serving a pleading may, with the permission of the Court, be stated as a counterclaim by supplemental pleading.

(e) Omitted counterclaim. -- When a party fails to plead a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the party may by leave of Court plead the counterclaim by amendment pursuant to SCR-Dom. Rel. 15(a).

(f) Request for change of name on divorce. -- In action for divorce, a party may in a responsive pleading request restoration of the party's birth-given or other previously-used name.

COMMENT
Paragraph (d) provides that when a claim which would otherwise be a compulsory counterclaim either matures or is acquired by a party after serving a responsive pleading but before trial, it must be pleaded. An example of such a claim is one for absolute divorce where the ground of one year separation had not been reached until after the party filed an answer in a suit for legal separation. If, upon motion, the Court determines that litigation of the counterclaim in the instant proceeding would result in substantial prejudice to any party, it may either continue the trial date to allow the parties to prepare to litigate all claims, or it may order the separate trial of the counterclaim. This deviation from SCR-Civil 13 accommodates the unique nature of actions in the Domestic Relations Branch, and furthers the purpose of the rule by promoting complete litigation of all claims between the parties in one action. Paragraph (f) makes it clear that a party need not file a counterclaim for a change of name upon divorce. The request may be included in the party's responsive pleading.

Rule 14. [Deleted].

Rule 15. Amended and supplemental pleadings.

(a) Amendments. -- A pleading may be amended once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted, the pleading may be amended at any time within 20 days after it is served or before the initial status hearing has been held, whichever occurs first. Otherwise a pleading may be amended only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. No motion to amend will be granted unless it recites that the movant sought to obtain the consent of parties affected, and that such consent was denied. If a pleading is dismissed or stricken with leave to amend, an amended pleading must be filed within 20 days unless otherwise provided by order of court. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the Court otherwise orders.

(b) Amendments to conform to the evidence. -- When issues not raised by the pleading are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. The pleadings may be amended to conform to the evidence and to raise those issues upon motion made by any party before or after judgment, but failure so to

amend does not affect the result of the trial of those issues. If evidence is objected to at the trial on the ground that it is not within the issues raised by the pleadings, the Court may allow the pleadings to be amended unless amendment would unduly prejudice the party in maintaining the party's action or defense upon the merits. The Court may grant a continuance to enable the objecting party to meet such evidence.

(c) Relation back of amendments. -- Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

(d) Supplemental pleadings. -- Upon motion of a party the Court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. A supplemental pleading stating a claim required to be made pursuant to SCR-Dom Rel 13(e) shall be permitted in accordance with that rule. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the Court deems it advisable that the adverse party respond to the supplemental pleading, it shall so order, specifying the time therefor.

Rule 16. Pretrial procedure in domestic II cases.

(a) Applicability. -- Unless otherwise ordered by the judicial officer to whom the case is assigned, the provisions of this Rule shall apply to all cases assigned to the Domestic II Calendar.

(b) Initial status conference. -- In every case assigned or assignable to a domestic relations calendar, an initial status conference shall be held as soon as practicable after the case is at issue. At that conference the judicial officer shall ascertain the status of the case; explore the possibilities for early resolution through settlement or alternative dispute resolution or for expediting the case by use of stipulations; explore issues of service, notice, and identity of necessary parties; and determine a reasonable time frame for bringing the case to conclusion. The judicial officer may require that the parties exchange information pursuant to SCR-Dom. Rel. 26(a)(1). The judicial officer shall either determine any outstanding motions, if time allows and the parties are prepared, or set a date for hearing the motions. The judicial officer shall also consider whether the complexity of the case, the need for Court supervision of discovery, or other relevant factors warrant certification to the Domestic I Calendar pursuant to SCR-Dom. Rel. 40(c). After consulting with the attorneys for the parties and with any unrepresented parties, the judicial officer shall set dates for future events in the case, which may include:

(1) A deadline by which discovery must be completed, which may be modified only by leave of Court or agreement of the parties;

(2) A deadline by which motions must be filed, except motions in limine, motions to bifurcate, or motions for which leave to file has been obtained.

(3) Dates for the filing of legal memoranda and, if custody is or may be an issue, dates for appropriate motions, including those for Social Services investigations and appointment of guardians ad litem.

The schedule set at the initial status conference may be modified by agreement of the parties, except that dates for court proceedings may not be modified without leave of Court.

(c) Telephonic conferences. -- In the discretion of the Court and with the consent of the parties, any pretrial communications may be conducted by telephone.

(d) Sanctions. -- If a party or a party's attorney fails to comply with the requirements of this Rule, the Court, upon motion or its own initiative, may make such orders with regard thereto as are just, including any of the orders provided in SCR-Dom. Rel. 37(b)(2)(B), (C), and (D). The Court may require the party or the attorney representing the party, or both, to pay the reasonable expenses, including attorneys' fees, incurred because of any noncompliance with this Rule unless the Court finds that the noncompliance was substantially justified or that other circumstances make an award unjust.

COMMENT
This Rule provides a flexible pretrial procedure for cases set on the Domestic II Calendar. In cases whose complexity warrants a more structured pretrial procedure; SCR-Dom. Rel. 16-I should be applied.

Rule 16-I. Pretrial procedure in domestic I cases.

(a) Applicability. -- Unless otherwise ordered by the judicial officer to whom the case is assigned, the provisions of this Rule shall apply to all cases assigned to the Domestic I Calendar.

(b) Initial status conference. -- In every case assigned or assignable to a domestic relations calendar, an initial status conference shall be held as soon as practicable after the case is at issue. At that conference the judicial officer shall ascertain the status of the case; explore the possibilities for early resolution through settlement or alternative dispute resolution, or for expediting the case by use of stipulations; explore issues of service, notice and identity of necessary parties; and determine a reasonable time frame for bringing the case to conclusion. The judicial officer may require that the parties exchange information pursuant to SCR-Dom. Rel. 26(a)(1). After consulting with the attorneys for the parties and with any unrepresented parties, the judicial officer will set dates for future events in the case, which may include:

(1) Deadline for discovery requests and close of discovery. -- If a deadline for discovery requests is set, no interrogatories, requests for admission, requests for production or inspection, or motions for physical or mental examinations may be served after that date. Only party depositions *ad testificandum* and nonparty depositions *duces tecum* or *ad testificandum* may be noticed after that date. If a deadline for close of discovery is set, no deposition or other discovery may be had after that date. Deadlines established pursuant to this subparagraph may only be extended by leave of Court or agreement of the parties.

(2) Exchange lists of fact witnesses. -- By this date, each party must file and serve a listing, by

name and address, of all fact witnesses to be called by that party.

(3) Exchange lists of expert witnesses. -- By this date a statement comporting with the requirements of SCR-Dom. Rel. 26(b)(4) must be filed and served by any proponent of an issue (a party asserting a claim or an affirmative defense) who will offer an expert opinion on such an issue even if the names and information were not requested in a party's discovery.

(4) Deadline for filing motions. -- By this date all motions must be filed, except motions in limine, motions to bifurcate, or motions for which leave to file has been obtained.

(5) Other matters. -- Consideration should also be given to setting dates for the filing of legal memoranda, trial briefs, and pretrial statements, the need for appraisals, and, if custody is or may be an issue, dates for requests for Social Services investigations, appointment of guardians ad litem and forensic evaluations.

The schedule set at the initial status conference may be modified by agreement of the parties, except that dates for court proceedings may not be modified without leave of Court.

(c) Pretrial discussion. -- Unless otherwise ordered, not less than 14 days prior to the trial date, or 14 days prior to the pretrial conference, if one is scheduled, trial counsel for each represented party and any unrepresented parties shall confer.

They shall endeavor to reach agreement on the following matters:

(1) the formulation and simplification of the issues, including the elimination of insupportable claims or defenses;

(2) the necessity or desirability of amendments to the pleadings;

(3) admissions of facts or stipulations which will avoid unnecessary proof, and the authenticity of documents;

(4) the identification of witnesses and documents;

(5) the advisability of referring matters to a commissioner or master;

(6) settlement of the case or the use of extrajudicial procedures to resolve the dispute;

(7) the resolution of pending motions;

(8) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems; and

(9) such other matters as may aid in the disposition of the action.

(d) Service of exhibits one week prior to trial. -- One week before the trial date each party shall serve on all other parties copies of all known documentary exhibits which that party may offer at trial, unless otherwise ordered. Where a party proposes to offer more than 15 exhibits at trial, that party shall place a numbered exhibit sticker on each exhibit and identify the exhibits, by exhibit number, on an exhibit summary form (copies of which are available in the Clerk's Office) served with the exhibits. The exhibit summary form, and the original exhibits, separated by tabbed divider pages, shall be fastened or placed in a notebook. By this date, each party shall also make nondocumentary exhibits available for inspection by other parties. Except for rebuttal or impeachment purposes, no party may offer at trial any exhibit not served as required by this Rule, without leave of court or agreement of the parties.

(e) Pretrial and settlement conference. -- In cases in which the assigned judicial officer has set pretrial and/or settlement conferences, all parties and trial counsel for each represented party shall attend the pretrial and/or settlement conference, unless excused by the judicial officer for good cause shown. The parties must bring to the conference their trial exhibits and be prepared to make any objections to the exhibits of the other party if the pretrial conference is scheduled after the date for exchange of exhibits.

(f) Pretrial order. -- If there is a pretrial conference, an order shall be entered reciting the action taken. Insofar as possible, the Court will resolve all pending disputes in the pretrial order. With respect to some matters, it may be necessary to reserve ruling until the time of trial or to require additional briefing by the parties prior to trial. The pretrial order may set limits with respect to the time for opening statement, examination of witnesses, and closing argument and may also limit the number of lay and expert witnesses who can be called by each party, or the total amount of time each party may have for presentation of the party's case.

(g) Authority of counsel. -- Counsel for each party participating in any conference before trial, or in the discussion described in paragraph (c) of this Rule, must have authority to enter into stipulations, to make admissions regarding all matters that the participants may reasonably anticipate may be discussed, and to participate fully in all settlement discussions.

(h) Telephonic conferences. -- In the discretion of the Court and with the consent of the parties, any pretrial communications may be conducted by telephone.

(i) Sanctions. -- If a party or a party's attorney fails to obey a scheduling or pretrial order, or fails to appear at a scheduling or pretrial conference, or is substantially unprepared to participate in the conference, or fails to participate in good faith or has otherwise not complied with the requirements of this Rule, the Court, upon motion or its own initiative, may make such orders with regard thereto as are just, including any of the orders provided in SCR-Dom. Rel. 37(b)(2)(B), (C), and (D). The Court may require the party or the attorney representing the party, or both, to pay the reasonable expenses, including attorneys' fees, incurred because of any noncompliance with this Rule unless the Court finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

COMMENT

This rule provides a more structured pretrial procedure than SCR-Dom. Rel. 16 for those domestic relations cases whose complexity or need for Court supervision warrants such treatment. The rule provides more flexible scheduling periods than the corresponding civil rule to accommodate the more fluid nature of Domestic Relations cases. It is in the Court's discretion, of course, to allow even more flexibility when appropriate in a particular case.
While subparagraph (b)(2) requires a party to file a listing of all fact witnesses the party intends to call, the party should not be precluded from calling at trial other witnesses for purposes of rebuttal or impeachment.

IV. PARTIES

Rule 17. Parties plaintiff and defendant; capacity.

(a) Real party in interest. -- Every action shall be brought in the name of the real party in interest. A personal representative, guardian, trustee, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought; and when an applicable statute so provides, an action for the use or benefit of another shall be brought in the name of the United States or the District of Columbia. No action shall be dismissed on the ground that it is not brought in the name of the real party in interest until a reasonable time has been allowed after objection for curing the defect, and any such revision shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Capacity to sue or be sued. -- The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of the individual's domicile. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. In all other cases capacity to sue or be sued shall be determined by the law of the District of Columbia, except (1) that a partnership or other unincorporated association, which has no such capacity by the law of the District of Columbia, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States, and (2) that the capacity of a receiver appointed by a court of the United States to sue or be sued in a court of the United States is governed by Title 28, U.S.C. §§ 754 and 959(a).

(c) Representation of minors or incompetent persons. -- Whenever a minor or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the minor or incompetent person. A minor or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The Court shall appoint a guardian ad litem for a minor or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the minor or incompetent person. Where a substantial question of incompetency is raised, and after an opportunity for all parties to be heard, the Court shall appoint a guardian ad litem for a person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the person.

Rule 18. Joinder of claims.

A party asserting a claim or counterclaim may join any other claim the party has against an opposing party.
Whenever a claim is one formerly cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action.

COMMENT
SCR-Dom. Rel. 18 permits joinder of all claims a party has against an opposing party, regardless of whether they arise out of the marriage or would otherwise be cognizable in the Family Division. See SCR-Dom. Rel. 1. Where the Court deems it appropriate, it may sever the claims pursuant to SCR-Dom. Rel. 42(b).

Rule 19. Joinder of persons.

Upon motion of a party or of its own initiative, the Court shall order the joinder of all indispensable persons and may order the dismissal or joinder of other persons at any stage of the action and on such terms as are just. If a person cannot be made a party and the Court determines that in equity the action should not proceed among the parties before it, the Court shall dismiss the action.

COMMENT
SCR-Dom. Rel. 19 as amended consolidates the joinder provisions of former SCR-Dom. Rel. 19, 20 and 21. The amendments reflect the statutory framework for Domestic Relations actions, which provides for joinder in stated circumstances (e.g. D.C. Code § 16-4510 (additional parties in custody proceedings)). As to the joinder of indispensable persons, the factors to be considered by the Court may include: (1) the extent to which a judgment rendered in the person's absence might be prejudicial to the person or those already parties; (2) the extent to which the prejudice can be lessened or avoided by protective provisions in the judgment, by the shaping of relief, or other measures; (3) whether a judgment rendered in the person's absence will be adequate; and (4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. Should a joinder issue arise which is not otherwise addressed, reference should be made to the applicable civil rule.

Rule 20 [Deleted].

Rule 21 [Deleted].

Rule 22 [Deleted].

Rule 23 [Deleted].

COMMENT

SCR-Civil 23 has been deleted as not appropriate to the Family Division.

Rule 23-I [Deleted].

COMMENT

SCR-Civil 23-I has been deleted as not appropriate to the Family Division.

Rule 23-II [Deleted].

COMMENT

SCR-Civil 23-II has been deleted as not appropriate to the Family Division.

Rule 23.1 [Deleted].

COMMENT

SCR-Civil 23.1 has been deleted as not appropriate to the Family Division.

Rule 23.2 [Deleted].

COMMENT

SCR-Civil 23.2 has been deleted as not appropriate to the Family Division.

Rule 24. Intervention.

(a) Intervention of right. -- Upon timely application anyone shall be permitted to intervene in an action (1) when applicable law confers an unconditional right to intervene, or (2) when the applicant claims an interest relating to the subject of the action and the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive intervention. -- Upon timely application any person or governmental entity may be permitted to intervene in an action (1) when applicable law confers a conditional right to intervene, or (2) when the applicant asserts a claim or defense which has a question of law or fact in common with the pending action. In exercising its discretion the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. -- Requests to intervene shall be by motion served upon the parties as provided in SCR-Dom. Rel 5. The motion shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

(d) Constitutional question.

(1) Notice to government. -- When the constitutionality of an act of Congress affecting the public interest is drawn in question in any action to which the United States or an officer, agency, or employee thereof is not a party, the Court shall notify the Attorney General of the United States in the manner provided in Title 28, U.S.C. § 2403. Similar notice shall be provided to the Corporation Counsel of the District of Columbia when the constitutionality, or the validity under the District of Columbia Self-Government and Governmental Reorganization Act of 1973, of an

order, regulation, or enactment of any type affecting the public interest of the District of Columbia is drawn in question in any action to which the District of Columbia or an officer, agency, or employee thereof is not a party. Any pleading raising an issue under this subparagraph shall bear immediately below the caption the inscription "RULE 24 NOTIFICATION REQUIRED".
(2) Intervention by the United States or the District of Columbia. -- In any case in which the Court has sent a notification to the Attorney General of the United States or the Corporation Counsel of the District of Columbia pursuant to subparagraph (d)(1) of this Rule, the Court shall permit the United States, or the District of Columbia, respectively, to intervene for the presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States, or the District of Columbia, as appropriate, shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

Rule 24-I. [Deleted].

Rule 25. Substitution of parties.

(a) Death.

(1) If a party dies, a suggestion of death may be filed and served upon the parties as provided in SCR-Dom. Rel. 5. The suggestion of death shall include a statement of the fact of the death. If the claim is not extinguished, the Court may order substitution of the proper parties upon motion made by any party or by the successors or representatives of the deceased party and served on the parties as provided in SCR-Dom. Rel. 5 and upon the persons to be substituted as provided in SCR-Dom. Rel. 4. Unless the motion for substitution is made within 90 days after the death is suggested upon the record, the action shall be dismissed as to the deceased party.

(2) If upon the death of a party the action survives only as to the remaining co-plaintiff(s) or co-defendant(s), the death shall be suggested upon the record and the action shall proceed in favor of or against the remaining parties.

(b) Incompetency. -- If a party becomes incompetent, the Court upon motion made and served as provided in paragraph (a) of this Rule may allow the action to be continued by or against the party's representative.

(c) Transfer of interest. -- In case of any transfer of interest, the action may be continued by or against the original party, unless the Court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in paragraph (a) of this Rule.

V. DEPOSITIONS AND DISCOVERY.

Rule 26. General provisions governing discovery; disclosure of information.

(a) Disclosure of information; Methods to discover additional matter.
(1) Pretrial disclosures. -- At the status conference, the judicial officer shall determine whether to order the parties to exchange information and documents, and, if so, set the dates and sequence. If so ordered, each party shall provide to the other parties the following information regarding the evidence that the party may present at trial other than solely for impeachment purposes:

(A) The name, address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises.

(B) A copy of each exhibit, with a list of all exhibits which separately identifies those which the party expects to offer and those which the party may offer if the need arises.

(C) The identity of any expert witness, and copies of any exhibits to be used in connection with the expert's testimony.

(D) Financial information in accordance with a form(s) provided by the Court.

An order for pretrial disclosures shall not preclude a subsequent motion for a protective order, where appropriate.

(2) Discovery methods. -- In addition to any disclosures made pursuant to subparagraph (a)(1), parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; requests for production or for permission to enter property for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Discovery scope and limits. -- Unless limited by order of the judicial officer in accordance with these Rules, the scope of discovery is as follows:

(1) In general. -- Parties may obtain discovery regarding any matter, not privileged, which is relevant to an issue involved in the pending action, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Limitations. -- The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the judicial officer if the judicial officer determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues in the litigation, and the importance of the proposed discovery in resolving the issue.

The judicial officer may act upon his or her own initiative or pursuant to a motion under paragraph (c).

(3) Discovery of trial preparation materials. -- A party may obtain discovery of documents and tangible things that are relevant, and not privileged, and were prepared in anticipation of litigation or for trial only upon a showing that the party seeking discovery has substantial need of the materials and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the judicial officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of SCR-Dom. Rel. 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Discovery of trial preparation of experts. -- Discovery of facts known and opinions held by an expert, otherwise relevant and not privileged, and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (ii) A party may by deposition require a person whom any other party expects to call as an expert witness at trial to state the substance of the facts and opinions to which the expert is expected to testify and the grounds for each opinion. (iii) Upon motion, the judicial officer may order discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subparagraph (b)(4)(C) of this Rule, concerning fees and expenses as the judicial officer may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in SCR-Dom. Rel. 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, upon motion the judicial officer shall require that the party seeking discovery:
(i) pay the expert a reasonable fee for time spent in responding to discovery under this rule;

(ii) pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from an expert who has been retained or specially employed by the other party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial. The judicial officer may also order the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from an expert who is expected to be called as a witness at trial.

(5) Claims of privilege or protection of trial preparation materials. -- When a party withholds information otherwise discoverable under these Rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(c) Protective orders. -- Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has made a good faith effort to resolve the dispute without court action, and for good cause shown, the judicial officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. In matters relating to a deposition, the court in the district where the deposition is to be taken may make such an order. The protective order may include one or more of the following: (1) that the disclosure or discovery not be had; (2) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the Court; (6) that a deposition after being sealed be opened only by order of the Court; (7) that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Court.

Upon the filing of the motion for a protective order, further action with respect to the matter in dispute shall be stayed until the Court's determination of the motion. The provisions of SCR-Dom. Rel. 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Sequence and timing of discovery. -- Methods of discovery may be used in any sequence unless otherwise ordered by the judicial officer, and the fact that a party is conducting discovery shall not operate to delay any other party's discovery. Time limitations for completion of discovery will be set by order of the judicial officer.

(e) Motion to enlarge time for discovery. -- A motion for an enlargement of time for discovery shall require a showing of good cause and shall specify the discovery to be sought and the time within which the discovery is expected to be completed.
(f) Supplementation of disclosures and responses. -- A party who has made a disclosure or

responded to a request for discovery is under a duty to supplement or correct the disclosure or response to include information thereafter acquired if ordered by the judicial officer or in the following circumstances:

(1) Where there was a question directly addressed to (A) the identity and location of persons having knowledge of specific discoverable matter, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which the person is expected to testify, and the substance of the person's testimony.

(2) Where the party obtains information upon the basis of which (A) the party knows that the disclosure or response was incorrect when made, or (B) the party knows that the disclosure or response though correct when made is no longer true and the circumstances are such that a failure to amend it is in substance a knowing concealment.

COMMENT
Subparagraph (a)(1) of this Rule allows the Court, in appropriate cases, to require the parties to disclose certain information and documents whether or not requested in discovery. It is intended to provide automatically for basic information likely to be needed to fairly determine the issues. The parties may employ traditional discovery methods to obtain the same or additional information to prepare for trial or make an informed decision about settlement.

Rule 27. Depositions before action or pending appeal.

(a) Before action.
(1) Petition. -- A person who desires to perpetuate testimony regarding any matter that may be cognizable in this Court may file a verified petition in this Court or in a court of competent jurisdiction for the place of residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show: (1) that the petitioner expects to be a party to an action cognizable in this Court but is presently unable to bring it or cause it to be brought, (2) the subject matter of the expected action and the petitioner's interest therein, (3) the facts which the petitioner desires to establish by the proposed testimony and the reasons for desiring to perpetuate it, (4) the names or a description of the persons the petitioner expects will be adverse parties and their addresses so far as known, and (5) the names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to elicit from each. The petition shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined for the purpose of perpetuating testimony.

(2) Notice and service. -- The petitioner shall serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the Court at a specified time and place for the order described in the petition. At least 20 days before the date of hearing the notice shall be served either within or without the district or state in the manner provided in SCR-Dom. Rel. 4(d) for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the Court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in SCR-Dom. Rel.

4(d), an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the provisions of SCR-Dom. Rel. 17(c) apply.

(3) Order and examination. -- If the Court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these Rules; and the Court may make orders of the character provided for by SCR-Dom. Rel. 34 and 35. For the purpose of applying these Rules to depositions for perpetuating testimony, each reference to this Court shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) Use of deposition. -- If a deposition to perpetuate testimony is taken under these Rules or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in this Court, in accordance with the provisions of SCR-Dom. Rel. 32(a).

(b) Pending appeal. -- If an appeal has been taken from a judgment of the Court or before the taking of an appeal if the time therefor has not expired, the Court may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the Court. In such case the party who desires to perpetuate the testimony may make a motion for leave to take the depositions, upon the same notice and service as if the action was pending in the Court. The motion shall show (1) the names and addresses of persons to be examined and the substance of the testimony which the party expects to elicit from each; and (2) the reasons for perpetuating their testimony. If the Court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may order the depositions to be taken and make orders of the character provided for by SCR-Dom. Rel. 34 and 35. A deposition pending appeal may be used in the same manner and under the same conditions as these Rules prescribe for depositions taken in pending actions.

(c) Perpetuation by action. -- This Rule does not limit the power of a court to entertain an action to perpetuate testimony.

COMMENT
SCR-Domestic Relations 27 provides auxiliary proceedings for the perpetuation of testimony either before an action is initiated or after judgment and before the expiration of the time for taking an appeal or pending appeal, for use in the event of further proceedings in the Superior Court. Paragraphs (a) and (b). Paragraph (c) makes it clear that the rule does not preclude an action for perpetuating testimony. However, an action to perpetuate testimony requires service of process in the same manner as in the expected action. Consequently, an action cannot proceed unless service of process is effected and personal jurisdiction obtained over the defendant.

Rule 28. Persons before whom depositions may be taken; depositions outside the forum jurisdiction.

(a) Persons before whom depositions may be taken.

(1) Within the United States. -- Within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the Court. A person so appointed has power to administer oaths and take testimony. The term officer as used in SCR-Dom. Rel. 30, 31 and 32 includes a person appointed by the Court or designated by the parties under SCR-Dom. Rel. 29.

(2) In foreign countries. -- Depositions may be taken in a foreign country (1) pursuant to any applicable treaty or convention, or (2) pursuant to a letter of request (whether or not captioned a letter rogatory), or (3) on notice before a person authorized to administer oaths in the place where the examination is held, either by the law thereof or by the law of the United States, or (4) before a person commissioned by the court, which person shall have the power by virtue of the commission to administer any necessary oath and take testimony. A commission or a letter of request shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter of request that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter of request may be addressed "To the Appropriate Authority in [here name the country]." When a letter of request or any other device is used pursuant to any applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention. Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States under these Rules.

(3) Disqualification for interest. -- No deposition shall be taken before a person who is a relative or employee or attorney of a party, or is a relative or employee of such attorney, or is financially interested in the action.

(b) Depositions outside the forum jurisdiction.

(1) Actions in this Court. -- Any party to a domestic relations action pending in this Court may file with the Court a motion for appointment of an examiner to take the testimony of a witness who resides outside the District of Columbia. The motion shall state the name and address of each witness sought to be deposed and the reasons why the testimony of such witness is required in the action. The motion shall be served on all other parties to the action who may within five days file opposition to the motion as prescribed in SCR-Dom. Rel. 12. If the motion is granted, the Court shall appoint an examiner to take the testimony of such witnesses as are designated in the order of appointment and shall issue a commission to the examiner who shall take the testimony in the manner prescribed in these Rules.

(2) Actions in other jurisdictions. -- When a commission is issued or notice given to take the testimony of a witness found within the District of Columbia, to be used in an action pending in a court of a state, territory, commonwealth, possession, or place under the jurisdiction of the United States, the party seeking that testimony may file with this Court a certified copy of the

commission or notice. If the commission or notice is in order, the Clerk shall, upon approval by the judge-in-chambers of the commission or notice and the proposed subpoena, issue a subpoena compelling the designated witness to appear for deposition at a specified time and place. Testimony taken under this subparagraph shall be taken in the manner prescribed in these Rules and the Court may entertain any motion, including motions for quashing service of a subpoena and for issuance of protective orders, in the same manner as if the action were pending in this Court.

Rule 28-I. [Deleted].

Rule 29. Stipulations regarding discovery procedure.

Unless otherwise directed by the judicial officer pursuant to SCR-Dom. Rel. 16, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these Rules for other methods of discovery.

COMMENT
Under the individual calendar system, each judicial officer will regulate the scope and limitations on discovery of cases on that judicial officer's calendar. Consequently, SCR-Dom. Rel. 29 does not attempt to delineate the permissible range of modifications to discovery procedure to which the parties may stipulate.

Rule 30. Depositions upon oral examination.

(a) When depositions may be taken. -- After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or 70 days in any case involving the District of Columbia or its officer or agency, or the United States or its officer or agency; except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subparagraph (b)(2) of this Rule. The attendance of witnesses may be compelled by subpoena as provided in SCR-Dom. Rel. 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the Court prescribes.

(b) Notice of examination; general requirements; special notice; nonstenographic recording; production of documents and things; deposition of organization; deposition by telephone or other remote electronic means.

(1) A party desiring to take a deposition upon oral examination shall give reasonable notice in writing to every other party. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice. If the deposition is to be recorded by videotape pursuant to

subparagraph (b)(7) of this Rule, or by other nonstenographic means, the notice shall specify the method of recording. If a videotape deposition is to be taken for use at trial pursuant to SCR-Dom. Rel. 32(a)(4), the notice shall so specify.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the District of Columbia and more than 25 miles from the place of trial, or is about to go out of the United States, and will be unavailable for examination unless the person's deposition is taken before expiration of the 30 or 70-day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and the attorney's signature constitutes a certification by the attorney that to the best of the attorney's knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by SCR-Dom. Rel. 11 are applicable to the certification.

(3) The parties may stipulate in writing or the Court may upon motion order that the testimony at a deposition be recorded by nonstenographic means. The stipulation or order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A party may arrange to have a stenographic transcription made at the party's own expense. Any objection under paragraph (c), any changes made by the witness, the witness's signature identifying the deposition as the witness's own or the statement of the officer that is required if the witness does not sign, as provided in paragraph (e), and the certification of the officer required by paragraph (f) shall be set forth in a writing to accompany a deposition recorded by nonstenographic means.

(4) The notice to a party deponent may be accompanied by a request made in compliance with SCR-Dom. Rel. 34 for the production of documents and tangible things at the taking of the deposition. The procedure of SCR-Dom. Rel. 34 shall apply to the request.

(5) A party may in the party's notice and in a subpoena name as the deponent a corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subparagraph (b)(5) does not preclude taking a deposition by any other procedure authorized in these Rules.

(6) The parties may stipulate in writing or the Court may upon motion order that a deposition be taken by telephone or other remote electronic means. For the purposes of this Rule and SCR-Dom. Rel. 28(a), 37(b)(1) and 45(a), a deposition taken by such means is deemed to be taken at the place where the deponent is to answer questions propounded to the deponent.
(7) A videotape deposition of a witness other than an expert may be taken only (1) upon written stipulation, (2) upon order of the Court for good cause shown, or (3) in the case of a non-party witness who is not subject to subpoena for trial or is otherwise unavailable for trial, upon notice.

(c) Examination and cross-examination; record of examination; oath; objections. -- Examinations and cross-examination of witnesses may proceed as permitted under the provisions of SCR-Dom. Rel. 43(b). The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subparagraph (b)(3) of this Rule. The testimony shall be transcribed if requested by a party.

All objections made at time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.
(d) Motion to terminate or limit examination. -- At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass or oppress the deponent or party, this Court or the court in the district where the deposition is being taken may order the termination or suspension of the examination, or may limit the scope and manner of the taking of the deposition as provided in SCR-Dom. Rel. 26(c). Upon demand of the objecting party or deponent, taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of SCR-Dom. Rel. 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) Submission to witness; changes; signing. -- When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties. The officer shall note separately any changes in form or substance which the witness desires to make, along with the reasons given by the witness for making them, and append the changes to the deposition. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under SCR-Dom. Rel. 32(d)(4) the Court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) Certification by officer; exhibits; copies.

(1) The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. The officer shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall comply with the requirements of SCR-Dom. Rel. 5(d) for the processing of such materials. If the deposition is recorded by

nonstenographic means, the cassette or tape shall be clearly marked with the name of the deponent, the date of the deposition, and the title of the action.

Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and appended to the deposition and may be inspected and copied by any party, except that if the person producing the materials desires to retain them the person may (A) offer copies to be marked for identification and appended to the deposition and to serve as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or (B) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them in which event the materials may then be used in the same manner as if appended to the deposition. Any party may move for an order that the original be appended to and returned with the deposition to the Court, pending final disposition of the case.

(2) The officer shall furnish a copy of the deposition to any party or to the deponent upon payment of reasonable charges.

(g) Failure to attend or to serve subpoena; expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the Court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the Court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

(h) Transcription of deposition taken by nonstenographic means. -- If a party intends to use in the proceeding a deposition recorded by nonstenographic means, the party shall have prepared a typewritten, verbatim transcript of the testimony. The original transcription shall not be filed with the Court unless otherwise ordered. If so ordered, a copy shall be served upon all parties, at least 30 days before such proceeding.

Rule 31. Depositions upon written questions.

(a) Serving questions; notice.

(1) After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in SCR-Dom. Rel. 45. The deposition of a person confined in prison may be taken only by leave of Court on such terms as the Court prescribes.

(2) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a corporation or a partnership or association or governmental agency in accordance with the provisions of SCR-Dom. Rel. 30(b)(5).

(3) Within 14 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 7 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 7 days after being served with redirect questions, a party may serve recross questions upon all other parties. The Court may for cause shown enlarge or shorten the time.

(b) Officer to take responses and prepare record. -- A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by SCR-Dom. Rel. 30(c), (e), and (f), to take the testimony of the witness in response to the questions. The deposition shall not be filed except as provided in SCR-Dom. Rel. 5(d).

Rule 32. Use of depositions in court proceedings.

(a) Use of depositions. -- At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under SCR-Dom. Rel. 30(b)(5) or 31(a) to testify on behalf of a corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Court finds: (A) That the witness is dead; or (B) that the witness is at a greater distance than 25 miles from the place of trial or hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used. A deposition taken without leave of court pursuant to a notice under SCR-Dom. Rel. 30(b)(2) shall

not be used against a party who demonstrates that, when served with the notice, the party was unable through the exercise of diligence to obtain representation of counsel at the taking of the deposition.

(4) A videotape deposition of an expert witness may be used for any purpose, unless otherwise ordered by the Court for good cause shown, even though the witness is available to testify, if the notice of that deposition specified that it was to be taken for use at trial.

(5) If only part of a deposition is offered in evidence by a party, an adverse party may require the offeror to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

(6) Substitution of parties pursuant to SCR-Dom. Rel. 25 does not affect the right to use depositions previously taken. When an action has been brought in this Court or in any court of the United States or of any state and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken in the original action may be used in the subsequent action as if originally taken therefor.

(b) Objections to admissibility. -- Subject to the provisions of SCR-Dom. Rel. 28(b) and subparagraph (d)(3) of this Rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) Effect of taking or using depositions. -- A party does not make a person the party's own witness for any purpose by taking the person's deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition under subparagraph (a)(2) of this Rule. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by that party or by any other party.

(d) Effect of errors and irregularities in depositions.

(1) As to notice. -- All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to disqualification of officer. -- Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.
(3) As to taking of deposition.

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if

presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless objection is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under SCR-Dom. Rel. 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within five days after service of the last questions authorized.

(4) As to completion and return of deposition. -- Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, or otherwise dealt with by the officer under SCR-Dom. Rel. 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(e) Form of presentation. -- Except as otherwise directed by the Court, a party offering deposition testimony pursuant to this Rule may offer it in stenographic or nonstenographic form, but, if in nonstenographic form, the party shall also provide the Court with a transcript of the portions so offered.

Rule 33. Interrogatories to parties.

(a) Availability. -- Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a corporation or partnership or association or governmental agency, by any officer or agency, who shall furnish such information as is available to the party. Interrogatories may, without leave of Court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the complaint or petition upon that party.

No party shall serve upon another party, at one time or cumulatively, more than 40 written interrogatories, including parts and subparts, unless otherwise ordered by the Court upon motion for good cause shown or upon its own motion, or unless the parties have agreed between themselves to a greater number.

(b) Answers and objections.

(1) Each interrogatory shall be copied and answered separately and fully in writing under oath unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable.

(2) The answers are to be signed by the person making them, and the objections signed by the attorney or unrepresented party making them.

(3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the complaint or petition upon that defendant or within 75 days after service of the summons and complaint upon the District of Columbia or its officer or agency or the United States or its officer or agency. A shorter or longer time may be directed by the Court or, in the absence of such an order, agreed to in writing by the parties.

(4) All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the Court for good cause shown.

(5) The party submitting the interrogatories may move for an order under SCR-Dom. Rel. 37(a) with respect to any objection or other failure to answer in an interrogatory.

(c) Scope; use at trial. -- Interrogatories may relate to any matters which can be inquired into under SCR-Dom. Rel. 26(b)(1), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the Court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(d) Option to produce business records. -- Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(e) Filing. -- Except as provided for in SCR-Dom. Rel. 5(d), interrogatories and responses thereto shall not be filed with the Court.

Rule 34. Production of documents and things and entry upon land for inspection and other purposes.

(a) Scope. -- Any party may serve on any other party a request:

(1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect and copy any designated documents (including writings, drawings, graphs,

charts, photographs, and other data compilations from which information can be obtained, translated, if necessary, by the respondent into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of SCR-Dom. Rel. 26(b) and which are in the possession, custody or control of the party upon which the request is served; or
(2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of SCR-Dom. Rel. 26(b).

(b) Procedure. -- The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the complaint or petition upon that party. The request shall set forth, either by individual item or by category, the items to be inspected, and describe each with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant or within 75 days after service of the summons and complaint upon the District of Columbia or its officer or agency or the United States or its officer or agency. A shorter or longer time may be directed by the Court or, in the absence of such an order, agreed to in writing by the parties. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under SCR-Dom. Rel. 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(c) Persons not parties. -- A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in SCR-Dom. Rel. 45. A copy of the subpoena and any other accompanying documents served on the person shall be served on each party.

Rule 35. Physical and mental examination of persons.

(a) Order for examination. -- When the mental or physical condition of a party, or of a person in the custody or under the legal control of a party, is in controversy, the Court may order the party to submit to a physical or mental examination by a suitable licensed or certified examiner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties. A showing of good cause shall include specific allegations of a mental or physical

condition that is material to the Court's determination of an issue in the case. The order shall specify the time, place, manner, conditions, and scope of the examination; the person or persons by whom it is to be made; and it shall set forth the limitations on the use and dissemination of the examination report as appropriate under the circumstances of the case.

(b) Report of examiner.

(1) Unless otherwise ordered, the report of the examination shall be served on each party but shall not be filed with the Court.

(2) This paragraph does not preclude discovery of a report of an examiner or the taking of a deposition of the examiner in accordance with the provisions of any other Rule.

COMMENT
While this Rule by its terms provides a general framework for examinations where a person's physical or mental condition is in controversy, it is not intended to preclude the use of court-ordered medical, genetic blood and tissue grouping tests where such tests are relevant to matters at issue. These tests, when used to establish parentage, are specifically authorized by D.C. Code §16-2343.

Rule 36. Requests for admission.

(a) Request for admission. -- A party may serve upon any other party a written request for the admission of the truth of a statement or opinion of fact or of the application of law to fact, or the genuineness of any document described in the request, for any matter within the scope of SCR-Dom. Rel. 26(b)(1). Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may be served upon the plaintiff after commencement of the action and upon any other party with or after service of the complaint or petition upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the Court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party and by the party's attorney, but, unless the Court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the complaint or petition upon that defendant or before the expiration of 75 days after service of the complaint or petition upon the District of Columbia or its officer or agency or the United States or its officer or agency. The response shall state verbatim each request for an admission. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and

that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of SCR-Dom. Rel. 37(c)(2), deny the matter or set forth reasons why the party cannot admit or deny.
The party who has requested the admissions may move to determine the sufficiency of the answers or objections. The provisions of SCR-Dom. Rel. 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) Effect of admission. -- Any matter admitted under this Rule is conclusively established unless the Court on motion permits withdrawal or amendment of the admission. The Court may permit withdrawal or amendment of an admission if the party who obtained the admission will not be unduly prejudiced in maintaining the action or defense on the merits. Any admission made by a party under this Rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

(c) Filing. -- Except as provided for in SCR-Dom. Rel. 5(d), requests for admissions and responses thereto shall not be filed with the Court.

Rule 37. Failure to make disclosure or cooperate in discovery: Sanctions.

(a) Motion for order compelling disclosure or discovery. -- A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling disclosure or discovery as set forth below. The movant shall accompany the motion to compel with a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure or discovery in an effort to secure the disclosure or discovery without court action. Any motion to compel disclosure or discovery must set forth verbatim the question propounded and the answer given, or a description of the other disclosure required or discovery requested and the response to this request. The motion must also set forth the reason or reasons the answer or response is inadequate.

(1) Appropriate court. -- A motion for an order to a party shall be made to this Court. A motion for an order to a person who is not a party shall be made to the court in the jurisdiction where the discovery is being, or is to be, taken.

(2) Motion.

(A) If a party fails to make a disclosure required by SCR-Dom. Rel. 26(a), any other party may move to compel disclosure and for appropriate sanctions.

(B) If a deponent fails to answer a question propounded or submitted under SCR-Dom. Rel. 30 or 31, or a corporation or other entity fails to make a designation under SCR-Dom. Rel. 30(b)(5) or 31(a)(2), or a party fails to answer an interrogatory submitted under SCR-Dom. Rel. 33, or if a party, in response to a request for inspection submitted under SCR-Dom. Rel. 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the

discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(3) Evasive or incomplete disclosure, answer or response. -- For purposes of this paragraph an evasive or incomplete disclosure, answer, or response is to be treated as a failure to disclose, answer, or respond.

(4) Expenses and sanctions.

(A) If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the Court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, unless the Court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified, or that other circumstances make an award of expenses unjust.

(B) If the motion is denied, the Court may enter any protective order authorized under SCR-Dom. Rel. 26(c) and shall, after affording an opportunity to be heard, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the Court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part, the Court may enter any protective order authorized under SCR-Dom. Rel. 26(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to comply with order.

(1) Sanctions by court in jurisdiction where deposition is taken. -- If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the jurisdiction in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) Sanctions by this Court. -- If a party or an officer, director, or managing agent of a party or a person designated under SCR-Dom. Rel. 30(b)(5) or 31(a)(2) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under paragraph (a) of this Rule or SCR-Dom. Rel. 35, or if a party fails to obey an order entered under SCR-Dom. Rel. 26(f), the Court may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matter regarding which the order was made or any other designated facts

shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;
(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of Court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under SCR-Dom. Rel. 35(a) requiring that party to produce another for examination, such orders as are listed in subparagraphs (A), (B), and (C) of this paragraph, unless the party failing to comply shows that party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the Court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Failure to disclose; false or misleading disclosure; refusal to admit.

(1) A party that without substantial justification fails to disclose information required by SCR-Dom. Rel. 26(a)(1) or 26(f) shall not be permitted to use as evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed, absent a showing of good cause. In addition to or in lieu of this sanction, the Court, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. In addition to requiring payment of reasonable expenses, including attorney's fees, caused by the failure, these sanctions may include any of the actions authorized under subparagraphs (b)(2)(A), (B), and (C) of this Rule.

(2) If a party fails to admit the genuineness of any document or the truth of any matter as requested under SCR-Dom. Rel. 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the Court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The Court shall make the order unless it finds that (A) the request was held objectionable pursuant to SCR-Dom. Rel. 36(a), or (B) the admission sought was of no substantial importance, or (C) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or (D) there was other good reason for the failure to admit.

(d) Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection. -- If a party or an officer, director, or managing agent of a party or a person designated under SCR-Dom. Rel. 30(b)(5) or 31(a)(2) to testify on behalf of a party fails

(1) to appear before the officer who is to take the deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under SCR-Dom. Rel. 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under SCR-Dom. Rel. 34, after proper service of the request, the Court on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subparagraphs (b)(2)(A), (B), and (C) of this Rule. In lieu of any order or in addition thereto, the Court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Court finds that the failure was substantially justified or the other circumstances make an award of expenses unjust.

The failure to act described in this paragraph may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has a pending motion for a protective order as provided by SCR-Dom. Rel. 26(c).

(e) [Vacant].

(f) Expenses against United States or District of Columbia. -- Except to the extent permitted by statute, expenses and fees may not be awarded against the United States or the District of Columbia under this Rule.

COMMENT
In subparagraph (a)(4), the phrase "after affording an opportunity to be heard" is intended to make it clear that the Court may award expenses or impose other sanctions for a party's failure to disclose, answer, or respond to a discovery request after consideration of written submissions, or after a hearing.

VI. TRIALS.

Rule 38 [Deleted].

COMMENT
SCR-Civil 38 has been deleted as not appropriate to the Family Division.

Rule 38.I. [Deleted]

COMMENT
SCR-Civil 38-I has been deleted as generally inapplicable to Family Division cases. However, see General Family Rule L.

Rule 39 [Deleted].
SCR-Civil 39 has been deleted as not appropriate to the Family Division.

Rule 40. Assignment of cases for trial.

(a) Contested and uncontested calendars.
(1) Contested trial calendar. -- Contested cases shall be evenly and randomly assigned to a specific contested trial calendar at the earliest of any of the following events: (1) an answer is filed; (2) a default is entered in a case involving issues of child custody, spousal support or property distribution; or (3) any motion is filed. When one of these events occurs, the Clerk shall immediately schedule a status hearing on the earliest available date on the assigned calendar, which date shall be no sooner than 30 days, and notify the parties in writing. All further proceedings in a case shall be scheduled and conducted by the judicial officer to whom the case is assigned in accordance with this Rule.

If the judicial officer determines that all matters in an assigned case appear to be uncontested, the judicial officer shall make a jacket entry so stating, and return the case to the Clerk's office for reassignment to the uncontested calendar. If the case becomes uncontested on the date of a contested trial, the judicial officer shall make a reasonable effort to conduct the uncontested trial on that date.

(2) Uncontested calendar. -- Upon the filing of a written stipulation by the plaintiff and defendant or attorneys of record that a case at issue or on the contested calendar is in fact uncontested as to all issues, the Clerk shall assign the case to the uncontested calendar for prompt trial. No order shall be entered on any issue which is not in fact uncontested.

If the judicial officer determines that a case on the uncontested calendar is in fact contested, the judicial officer shall certify the case to the Clerk's office for reassignment on the contested calendar. Unless the case can be heard on the date it becomes contested, the Clerk shall notify the parties by mail of the reassignment and status hearing date.

(b) Request for child custody and support. -- If a complaint or motion requests both child custody and support, the case shall be assigned to a Domestic II calendar for resolution by a judge. After resolution of the custody issue, the assigned judge may, if unable to conduct the hearing on support that day, certify the case to a hearing commissioner to determine the support issue. Nothing in this Rule shall preclude the judge from issuing an interim order for child support pending resolution of the custody issue.

(c) Assignment of cases to Domestic I Calendar.
(1) Domestic I Calendar. -- One or more judges assigned to the Family Division may be designated to maintain an individual (Domestic I) calendar. Unless otherwise provided in these Rules, the Domestic I judge will conduct all proceedings in cases on the Domestic I calendar to which that judge has been assigned.
(2) Designation of Domestic Relations I Calendar. -- It shall be the responsibility of the Presiding Judge of the Family Division to certify cases to the Domestic I Calendar. The Presiding Judge may certify cases to the Domestic I Calendar on the Presiding Judge's own initiative or his or her designee's or upon:

(A) The recommendation of any judge assigned to the Family Division; or

(B) The written motion filed by or on behalf of either party.

(3) Factors considered. -- In certifying a case to the Domestic I Calendar the Presiding Judge may consider the estimated length of trial, the number of witnesses who may appear or exhibits that may be introduced, the nature of the factual and legal issues involved, the extent to which discovery may require supervision by the Court, the number of motions that may be filed, and any other relevant factor appropriate for the orderly administration of justice.

(4) Procedure. -- Parties who have been notified that a case has been assigned to a Domestic I judge shall place the assigned judge's name below the civil action number on all papers filed. All pleadings and papers shall be filed in the Domestic Relations Clerk's Office. On the day of filing, a chambers copy of the pleading or paper filed shall be delivered by the parties to a depository designated by the Clerk of the Court for receipt of such papers by the assigned Domestic Relations I judge. If the original document was mailed, the chambers copy may be mailed to chambers.

Rule 40-I [Deleted].

Rule 40-II [Deleted].

Rule 41. Dismissal of actions.

(a) Voluntary dismissal: Effect thereof.

(1) By plaintiff; by stipulation. -- Subject to the provisions of SCR-Dom. Rel. 66 and of any applicable statute, a claim or counterclaim may be dismissed by the claimant without order of Court (i) by filing a notice of dismissal at any time before service by the adverse party of a responsive pleading or of a motion for summary judgment, or before introduction of evidence at the trial or hearing, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice.

(2) By order of Court. -- Except as provided in subparagraph (a)(1) of this Rule, the claimant may not dismiss an action or counterclaim without order of the Court. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the Court. The dismissal shall be subject to such terms and conditions as ordered by the Court, and unless otherwise specified in the order, the dismissal shall be without prejudice.

(b) Involuntary dismissal: Effect thereof. -- A party may move for dismissal of an action or of any claim against the party, or the Court may, sua sponte, enter an order dismissing the action or any claim therein for failure of the claimant to prosecute or to comply with these Rules or any order of the Court. Any order of dismissal entered sua sponte, including a dismissal for failure to effect service within the time prescribed by SCR-Dom. Rel. 4(l), may be vacated for good cause shown upon motion filed within 14 days from the date the order was entered on the docket.

Unless the Court in its order for dismissal otherwise specifies, a dismissal under this paragraph and any dismissal not provided for in this Rule, other than a dismissal for lack of jurisdiction or for failure to join a party under Rule 19, operates as an adjudication on the merits.

(c) Warning to delinquent party: Dismissal without prejudice. -- If a party seeking affirmative relief fails for 150 days from the time action may be taken, to comply with any law, Rule, or order requisite to the prosecution of the claim, or to avail of any right arising through the default or failure of an adverse party, the Clerk shall warn the delinquent party by mail that the claim will be dismissed if the party fails to comply with this Rule, and shall make a note in the docket of the mailing. A party who does not receive this warning is not relieved from the operation of this Rule.

(d) Dismissal by Clerk. -- If the delinquency described in paragraph (c) continues for 180 days the complaint or counterclaim of said party, as the case may be, shall be dismissed without prejudice. The time in which the delinquent party may take appropriate action to reinstate under SCR-Dom. Rel. 60(b) shall start to run from the entry of dismissal by the Clerk or, upon appropriate motions by the Court, and the Clerk in either case shall serve notice thereon by mail upon every party not in default for failure to appear, of which mailing the Clerk shall make an entry in the docket.

COMMENT
Unlike SCR-Civil 41, this Rule does not operate to convert a voluntary dismissal into an adjudication on the merits where the claimant has dismissed a prior action based on or including the claim in the instant case. An automatic adjudication on the merits is not appropriate due to the unique nature of domestic relations actions. New SCR-Domestic Relations 10(b)(8) requires that related prior or pending actions be identified in the party's initial pleading. This information will assist the Court in evaluating the matter before it.

Rule 41-I. [Deleted].

Rule 42. Consolidation; separate trials.
(a) Consolidation. -- (1) The Court may consolidate domestic relations actions and other cases before the Court relating to the same subject matter or parties or members of the same family or household. Upon consolidation, copies of the order of consolidation and of all subsequent pleadings and orders shall be filed in each case so consolidated, provided that all papers filed in an adoption case shall be maintained only in the adoption case file.

(2) An attorney or party who becomes aware of the existence of a related case shall immediately notify, in writing, the judicial officers on whose calendars the cases appear.

(b) Separate trials. -- The Court may order a separate trial of one or more claims or counterclaims or of any separate issues when it will promote the efficient administration of justice.

COMMENT
Paragraph (a) provides for the consolidation of domestic relations cases and other related cases in

the Superior Court. Because a number of factors affect the placement of consolidated Family Division cases on a particular calendar, no attempt is made to set forth the procedure in this Rule.

Rule 43. Evidence.

(a) Form and admissibility. -- In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these Rules. All evidence shall be admitted which is admissible under applicable statutes, or under the rules of evidence applied in the District of Columbia. In any case, the statute or rule which favors the reception of the evidence governs and the evidence shall be presented according to the most convenient method prescribed in any of the statutes or rules to which reference is herein made. The competency of a witness to testify shall be determined in like manner.

(b) Scope of examination and cross-examination. -- A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party and interrogate the witness by leading questions and contradict and impeach the witness in all respects as if the witness had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the adverse party only upon the subject matter of the examination in chief.

(c) Record of excluded evidence. -- If an objection to a question propounded to a witness is sustained by the Court, the examining attorney may make a specific offer of what the attorney expects to prove by the answer of the witness. The Court may add such other or further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. The Court upon request shall take and report the evidence in full, unless it clearly appears that the evidence is not admissible on any ground or that the witness is privileged.

(d) Interpreters. -- The Court may appoint an interpreter of its own selection and may fix the interpreter's reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the Court may direct, and may be taxed ultimately as costs, in the discretion of the Court.

COMMENT

This Rule is intended to be consistent with D.C. Code § 14-102 (Impeachment of Witnesses). Pursuant to SCR-Dom. Rel. 2(b)(5), whenever a person is required to take an oath, the person may make a solemn affirmation instead. For provisions on the admissibility of business records, see SCR-General Family Q.

Rule 43-I. [Deleted].

Rule 43-II. [Deleted].

COMMENT

The subject matter of former Rule 43-I is now treated in Rule 7-I

Rule 44. Proof of official record, statutes, ordinances and regulations; determination of foreign law.

(a) Authentication of official record.
(1) Domestic. -- An official record kept within the United States, or any state, district, or commonwealth, or within a territory subject to the administrative or judicial jurisdiction of the United States, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by the officer's deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the officer's office.

(2) Foreign. -- A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, vice consul, or consular agent of the United States or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the Court may, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification. The final certification is unnecessary if the record and the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.

(b) Lack of official record. -- A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subparagraph (a)(1) of this Rule in the case of a domestic record, or complying with the requirements of subparagraph (a)(2) of this Rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) Other proof. -- This Rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

(d) Proof of statutes, ordinances, and regulations. -- Printed books or pamphlets purporting on their face to be the statutes, ordinances, or regulations, of the United States, or of any state or territory thereof, or of any foreign jurisdiction, which are either published by the authority of any such state, territory, or foreign jurisdiction or are commonly recognized in its courts, shall be presumptively considered by the Court to constitute such statute, ordinance, or regulation. The Court's determination on such a matter shall be treated as a ruling on a question of law.

(e) Determination of foreign law. -- A party who intends to raise an issue concerning the law of a foreign country shall give notice by pleadings or other reasonable written notice. The Court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under SCR-Dom. Rel. 43. The Court's determination shall be treated as a ruling on a question of law.

Rule 44-I. [Deleted].

Rule 44-1. [Deleted].

Rule 45. Subpoena.

(a) Form; issuance.
(1) Every subpoena shall
(A) state the name of the Court; and
(B) state the title of the action, and its civil action number and individual calendar designation; and
(C) command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place specified therein; and
(D) set forth the text of paragraphs (c) and (d) of this Rule.
A command to produce evidence or to permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately.

(2) A subpoena for a deposition, production, or inspection shall specify a place for the deposition, production, or inspection which is within the District of Columbia, unless the parties and person subpoenaed otherwise agree or the Court, upon application, fixes another location.

(3) An attorney as an officer of the court may issue and sign a subpoena. A party not represented by an attorney may obtain from the clerk and complete a blank subpoena, and submit it to the clerk to be signed. The clerk may sign the subpoena if it relates to a case in which action is pending, otherwise the clerk shall refer the subpoena to a judicial officer for consideration.
(b) Service.
(1) A subpoena may be served by any person who is not a party and is at least 18 years of age. Service of a subpoena upon a person named in it shall be made by delivering a copy of it to such person and, if the person's attendance is commanded, by giving to that person the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the United States or the District of Columbia or an officer or agency thereof, fees and mileage need not be tendered. A copy of any subpoena commanding production of documents and things or inspection of premises shall be served on each party in the manner prescribed by SCR-Dom. Rel. 5(b).
(2) Subject to the provisions of clause (ii) of subparagraph (c)(3)(A) of this Rule, a subpoena for a hearing or trial may be served at any place within the District of Columbia, or at any place outside the District of Columbia that is within 25 miles of the place of the hearing or trial; a subpoena for a deposition, production, or inspection may be served at any place which is within

the District of Columbia or within 25 miles of the District of Columbia. When an applicable statute provides therefor, the Court upon proper application and cause shown may authorize the service of a subpoena at any other place. A subpoena directed to a witness in a foreign country who is a national or resident of the United States shall issue under the circumstances and in the manner and be served as provided in Title 28, U.S.C. § 1783.
(3) Proof of service when necessary shall be made by filing with the clerk of the court a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service.

(c) Protection of persons subject to subpoenas.
(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The Court shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.
(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible thin[g]s or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.
(B) Subject to paragraph (d)(2) of this Rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the Court. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the Court shall quash or modify the subpoena if it
(i) fails to allow reasonable time for compliance;
(ii) requires a person who is not a party or an officer of a party to travel to a place more than 25 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of subparagraph (c)(3)(B)(iii) of this Rule, such a person may in order to attend trial be commanded to travel from any such place to the place of trial, or
(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
(iv) subjects a person to undue burden.
(B) If a subpoena
(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
(iii) requires a person who is not a party or an officer of a party to incur substantial expense to

travel more than 25 miles to attend trial, the Court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the Court may order appearance or production only upon specified conditions.
(d) Duties in responding to subpoena.
(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.
(e) Contempt. -- Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the Court. An adequate cause for failure to obey exists when a subpoena purports to require a non-party to attend or produce at a place not within the limits provided by subparagraph (c)(3)(A)(ii).

COMMENT
Pursuant to subparagraph (b)(1) of this Rule, a person serving a subpoena commanding attendance in court must also give the person subpoenaed the fees for one day's attendance and the mileage allowed by law. Those fees and travel allowances can be found in Title 28 U.S.C. § 1821 et seq. See D.C. Code § 15-714. For waiver of prepayment of costs and witness fees, see SCR-Dom. Rel. 54(f). For purposes of this Rule, an attorney is not a party and may serve a subpoena. *See In re Kirk,* 413 A.2d 928 (D.C. App. 1980). However, in the event of a factual dispute over service, there is a risk that the attorney's ability to continue as counsel in the case will be affected.

Rule 46. Exceptions unnecessary.

Formal exceptions to rulings or orders of the Court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the Court is made or sought, makes known to the Court the action which the party desires the Court to take or the party's objection to the action of the Court and the grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party.

COMMENT
Identical to SCR-Civil 46.

Rule 47. [Deleted].

COMMENT
SCR-Civil 47 deleted as not appropriate to Family Division practice.

Rule 48. [Deleted].

COMMENT
SCR-Civil 48 deleted as not appropriate to Family Division practice.

Rule 49. [Deleted].

COMMENT
SCR-Civil 49 deleted as not appropriate to Family Division practice.

Rule 50. Judgment of dismissal.

A party defending a claim may move for a dismissal at the close of the claimant's evidence on the ground that upon the facts and the law the claimant has shown no right to relief. This motion does not waive the right to offer evidence in the event it is not granted. The Court may render judgment against the claimant or may decline to render any judgment until the close of all the evidence. If the Court renders judgment on the merits against the claimant, the Court shall make findings as provided in SCR-Domestic Relations 52(a). Unless the Court in its order for dismissal otherwise specifies, a dismissal under this Rule operates as an adjudication on the merits.

Rule 51. [Deleted].

COMMENT
SCR-Civil 51 deleted as not appropriate to Family Division practice.

Rule 52. Findings by the Court.

(a) Effect. -- In all actions tried upon the facts the Court shall make written findings of fact, separate conclusions of law and judgment which shall be entered pursuant to SCR-Dom. Rel. 58; and in granting or refusing interlocutory injunctions the Court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. The findings of a master, to the extent that the Court adopts them, shall be considered as the findings of the Court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. If an opinion or memorandum of decision resolves all of the issues on the merits, the judgment may be set forth separately or within the opinion or memorandum of decision. Findings of fact and conclusions of law are unnecessary on decisions of motions under SCR-Dom. Rel. 12 or 56 or any other motion except motions to modify an order of the Court and except as provided in SCR-Dom. Rel. 50.

(b) Amendment. -- On a party's motion filed not later than 10 days after entry of judgment, the Court may amend its findings or make additional findings and may amend the judgment accordingly. The motion to amend may accompany a motion for a new trial under SCR-Dom. Rel. 59.

(c) Matters taken under advisement. -- If a decision has not been rendered within 60 days of the date on which a motion was taken under advisement or a nonjury trial concluded, the Clerk shall send notice of that fact to the assigned judicial officer and shall repeat such notice every 30 days thereafter until a decision is rendered. If no decision has been rendered within 60 days of the issuance of the first such notice, the Clerk thereafter shall so advise that judicial officer, the parties, and the Chief Judge, and the assigned judicial officer shall provide to the Chief Judge and the parties within 30 days a written explanation for why the decision has not been rendered. The Chief Judge may take any action the Chief Judge deems appropriate in order to cause the matter to be decided promptly. If there has been no decision within six months, the Chief Judge may reassign the case to another judicial officer for retrial.

COMMENT
Paragraph (c) is not intended to trigger notices where the Court has announced a decision on the record but has yet to issue the written findings.

Rule 53. Masters.

(a) Appointment. -- There shall be a standing officer of the Court to be known as the Auditor-Master. In lieu of or in addition to reference to the Auditor-Master, the Court may appoint a special master in any pending action. As used in these Rules the word "master" includes the Auditor-Master and a special master.

(b) Reference. -- Upon motion or of its own initiative, the Court may refer a matter to a master. Except in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

(c) Powers. -- The order of reference to the master may specify or limit the master's powers and may direct the master to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before the master and to do all acts and take all measures necessary or proper for the efficient performance of the master's duties under the order. The master may require the production before the master of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. The master may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in SCR-Dom. Rel. 43(c).

(d) Proceedings.

(1) Meetings. -- When a reference is made, the Clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise

provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the Court for an order requiring the master to speed the proceedings and to make the report. If a party fails to appear at the time and place appointed, the master may proceed ex parte or, in the master's discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.
(2) Witnesses. -- The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in SCR-Dom. Rel. 45. If without adequate excuse a witness fails to appear or give evidence, the witness may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in SCR-Dom. Rel. 37 and 45.

(3) Statement of accounts. -- When matters of accounting are in issue before the master, the master may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as the master directs.

(e) Report.

(1) Contents and filing. -- The master shall prepare a report upon the matters submitted to the master by the order of reference and, if required to make findings of fact and conclusions of law, the master shall set them forth in the report. The master shall file the report with the Clerk of the Court and serve on all parties notice of the filing. Unless otherwise directed by the order of reference, the master shall file with the report a transcript of the proceedings and of the evidence and the original exhibits. Unless otherwise directed by the order of reference, the master shall serve a copy of the report on each party.

(2) Objections. -- The Court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the Court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in SCR-Dom. Rel. 7(d). The Court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(3) Stipulation as to findings. -- The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(4) Draft report. -- Before filing the master's report a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

(f) Fees and compensation. -- Fees, if any, for work performed by the Auditor-Master and compensation to be allowed to a special master shall be fixed by the Court. Fees for work

performed by the Auditor-Master shall bear a reasonable relation to the value of the services rendered. However, the Court, if appropriate, may order that a party or parties shall be charged no fee or only a reduced fee for work performed by the Auditor-Master. Fees and compensation may be charged to such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the Court, as the Court may direct. The special master shall not retain the master's report as security for the master's compensation; but when the party ordered to pay the compensation allowed by the Court does not pay it after notice and within the time prescribed by the Court, the special master is entitled to a writ of execution against the delinquent party.

(g) Deposit for expenses. -- A master may require the deposit of funds sufficient to defray the expenses of a reference, including a stenographic report of the testimony.

(h) Custody of exhibits. -- If no appeal is perfected, each party shall retake its exhibits from the master 30 days after the date of final disposition of the case in this Court. If an appeal is perfected, each party shall retake its exhibits from the master 30 days after final disposition of the case by the appellate court. If any party fails to retake its exhibits in accordance with this paragraph, the master may destroy or otherwise dispose of those exhibits.

Rule 53-I. [Deleted].

Rule 53-II. [Deleted].

VII. JUDGMENT.

Rule 54. Judgments; costs.

(a) Definition; form. -- "Judgment" as used in these Rules includes a decree and any order from which an appeal lies.

(b) Judgment upon multiple claims or involving multiple parties. -- When more than one claim for relief is presented in an action, whether as a claim or counterclaim, or when multiple parties are involved, the Court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Extent of relief. -- A judgment by default shall not be different in kind from or exceed in amount that prayed for in the pleading seeking relief. Except as to a party against whom a

judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings.

(d) Costs and attorneys' fees.
(1) Claims for costs and attorneys' fees shall be made in the complaint or answer and supported in detail in a motion in accordance with subparagraph (d)(2) of this Rule.
(2) Unless otherwise provided by statute or directed by the Court, the motion must be filed and served no later than 14 days after entry of judgment; must specify the judgment and the statute, rule, or other grounds entitling the moving party to the award; and must state the amount or provide a fair estimate of the amount sought. If directed by the Court, the motion shall also disclose the terms of any agreement with respect to fees to be paid for the services for which claim is made.

(3) The Court shall afford an opportunity for opposition to the motion. The Court shall find the facts and state its conclusions of law as provided in SCR-Dom. Rel. 52(a), and a judgment shall be set forth as provided in SCR-Dom. Rel. 58.

(4) Costs of depositions, reporters' transcripts on appeal, and premiums on bonds may be awarded at the discretion of the Court.

(5) The Court may establish special procedures by which issues relating to such fees may be resolved without extensive evidentiary hearings. In addition, the Court may refer issues relating to the value of services to a master under SCR-Dom. Rel. 53 without regard to the provisions of paragraph (b) thereof and may refer a motion for attorneys' fees to a hearing commissioner as if it were a dispositive pretrial matter.

(6) The provisions of subparagraphs (d)(1) through (5) do not apply to claims for fees and expenses as sanctions for violations of these rules.

(e) Costs of previously dismissed action. -- If a claimant who has once dismissed an action in any court commences an action based upon or including the same claim against the same adverse party, the Court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the claimant has complied with the order.

(f) Deleted.

COMMENT
Unlike SCR-Civil 54(d), paragraph (d) of this Rule requires that claims for attorneys' fees and costs be made in the complaint or answer, and substantiated in a motion filed and served no later than 14 days after entry of judgment.

Rule 54-I [Deleted].

Rule 54-II. Waiver of costs, fees, or security.

(a) General. -- The court may waive the prepayment of costs, fees, or security or the payment of costs, fees, or security accruing during any action upon the presentation of Form 106A (Application to Proceed Without Prepayment of Costs, Fees, or Security) and a finding that the party is unable to pay such costs, fees, or security without substantial hardship to the applicant or the applicant's family. The court must not deny such an Application solely because the applicant is at or above the federal poverty guidelines. Such an Application may be submitted at any point in the proceedings. Unless the court orders otherwise, the Application need not be served on the other parties and will be resolved ex parte. When an Application is granted in whole or in part, a notation will be made on the record in said action.

(b) Public benefits. -- If an applicant receives Temporary Assistance for Needy Families (TANF), General Assistance for Children (GAC), Program on Work, Employment and Responsibility (POWER), or Supplemental Security Income (SSI), the court must grant the Application without requiring additional information from the applicant.

(c) Health care benefits. -- Consistent with Form 106A, if an applicant receives Interim Disability Assistance (IDA), Medicaid, or the D.C. HealthCare Alliance, the court may grant the Application without requiring additional information from the applicant.

(d) Significant costs. -- In determining whether to waive the prepayment of costs, fees, or security, the court must take into account the likelihood that the matter may entail significant costs to the litigant, such as the costs of e-filing.

(e) Merit of underlying action. -- The court may not refuse to waive costs, fees, or security based upon the perceived lack of merit of the underlying action.

(f) Dismiss actions; enjoin repeat filers of frivolous matters. -- Nothing in this rule should be construed to limit the authority of courts to dismiss actions or to enjoin repeat filers of frivolous matters from filing future cases without prior approval of the court.

(g) Requiring additional information. -- If there is good cause to believe the information contained in Form 106A is inaccurate or misleading, or that the applicant has undergone a change of circumstances or submitted an incomplete Application, the court may require additional evidence in support of the request to waive prepayment of costs, fees, or security accruing during any action.

(h) Declaration. -- The Application must include the signed Declaration in Form 106A. Notarization is not required.

(i) Witness fees. -- Where a request to proceed without prepayment of costs, fees, or security is granted, witnesses will be subpoenaed without prepayment of witness fees, and the same remedies will be available as are provided for by law in other cases.

(j) Ruling in writing or on the record. -- If the court denies the Application for a waiver of the

prepayment of costs, fees, or security, the court must state its reason(s) for such ruling in writing or on the record in the presence of the applicant or his or her counsel.

(k) Motion for free transcripts. -- An applicant who has received a waiver of the prepayment of costs, fees, or security may file a motion requesting that free transcripts be prepared for appeal and explaining the basis for the motion. The court may not refuse to provide free transcripts unless the appeal is frivolous. In making this determination, the court must resolve doubt about the merits of the appeal in favor of the applicant. The court may order that only those portions of the trial proceedings necessary to resolution of the appeal be transcribed. [Amended, Mar. 15, 2010, effective April 11, 2010.]

COMMENT TO 2010 AMENDMENT.

D.C. Code § 15-712 governs *in forma pauperis* applications. There is no Federal Rule of Civil Procedure addressing such applications, but 28 U.S.C. § 1915 does. The District of Columbia statute, unlike the federal statute, does not provide the court with discretion to deny an application for *in forma pauperis* based upon the merit of the underlying action. *Compare* D.C. Code § 15-712 *with* 28 U.S.C. § 1915(e)(2); *see In re Turkowski*, 741 A.2d 406, 407 (D.C. 1999) (per curiam) ("the court must grant the request for *in forma pauperis* status if a proper application is made, and, having done so, thereafter treat the case as any other, including, of course, any appropriate dispositive actions"); *accord Lewis v. Fulwood*, 569 A.2d 594, 595 (D.C. 1990) (per curiam).

The Rule requires applicants seeking *in forma pauperis* status to submit their request utilizing Form 106A (Application to Proceed Without Prepayment of Costs, Fees or Security), which includes citations to pertinent statutes and caselaw.

Subsection (k) sets forth the standards for ruling upon a motion for free transcripts. *See, e.g.*, *P.F. v. N.C.*, 953 A.2d 1107, 1119 (D.C. 2008) (noting that an appellant proceeding *in forma pauperis* is entitled to a free transcript "if the trial judge . . . certifies that the appeal is not frivolous" and that "[d]oubts about [the] substantiality of the questions on appeal and the need for a transcript to explore them should be resolved in favor of the petitioner") (internal quotation marks and citations omitted); *Hancock v. Mut. of Omaha Ins. Co.*, 472 A.2d 867 (D.C. 1984), as discussed in P.F., 953 A.2d at 1119.

The Rule is stylistically consistent with Civil Rule 54-II, which is stylistically consistent with the Federal Rules of Civil Procedure.

Rule 55. Default.

(a) Entry. -- Where a defendant or respondent has failed to plead, or to appear in Court although ordered to do so, the plaintiff or petitioner shall be entitled to an entry of default by the Clerk. To obtain an entry of default, plaintiff or petitioner shall file with the Clerk a statement, made under oath, reciting that (i) proof of service has been filed, (ii) the time for the adverse party to plead or appear in Court has passed; and (iii) there has been compliance with the Soldiers and Sailors Civil Relief Act of 1940. The statement in support of a request for entry of default need not be served on the defendant or respondent. These procedures do not apply to proceedings otherwise covered by statute or rule, including those to determine paternity.

(b) Notice and hearing. -- Upon the filing of a sufficient statement as provided in paragraph (a)

of this Rule, the Clerk shall enter the fact of the default on the docket and assign the case to a judicial officer pursuant to SCR-Dom. Rel. 40. Unless otherwise directed by the assigned judicial officer, the Clerk shall send written notice to all parties reciting (i) that a default was entered on the docket on the date entered; (ii) the date scheduled for a hearing on the merits; (iii) a warning that the hearing will proceed and a judgment or order may be entered against the defendant or respondent; and (iv) the terms of SCR-Dom. Rel. 55(c) for setting aside the default. Such notice need not be sent where original service of process in the case was made by publication.
(c) Setting aside default. -- Upon motion to set aside the default, and for good cause shown, the Court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with SCR-Dom. Rel. 60(b). Whether or not the default is set aside, the Court may conduct or continue the hearing, require an answer to be filed, and impose such sanctions or limitations on discovery or presentation of evidence as the Court deems appropriate. Upon the filing of a new or additional claim by any party, a party against whom a default has been entered may appear and respond without having the default set aside.

(d) Plaintiffs or counterclaimants. -- The provisions of this Rule apply whether the party entitled to the judgment by default is a plaintiff, or a party who has pleaded a counterclaim. Except with respect to child support, a judgment by default is subject to the limitations of SCR-Dom. Rel. 54(c).

COMMENT
The procedures for default contained in this Rule do not apply to proceedings to determine paternity (see D.C. Code § 16-2341 et seq.; SCR-Dom. Rel. 405). The statement required under paragraph (a) of this Rule may be submitted by use of a court form, if available. Because, unlike Civil actions, Domestic Relations actions often involve issues over which the Court has continuing jurisdiction, paragraph (c) allows a party in default to appear and respond to new or additional claims raised by any party without having the default set aside.

Rule 55-I. [Deleted].

COMMENT
SCR-Civil 55-I was deleted as not necessary in Family Division.

Rule 55-II. [Deleted].

COMMENT
SCR-Civil 55-II was deleted as not necessary in Family Division.

Rule 56. Summary judgment.

(a) For claimant. -- A party seeking to recover upon a claim or a counterclaim, or to obtain a declaratory judgment may, after the expiration of 20 days from service of a pleading on the adverse party or after service of a motion for summary judgment by the adverse party, but within the time prescribed by rule or Court order, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(b) For defending party. -- A party against whom a claim or a counterclaim is asserted or a declaratory judgment is sought may, within the time prescribed by rule or Court order, or otherwise, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

(c) Standard for summary judgment. -- The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone.

(d) Form of affidavits; further testimony; defense required. -- Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The Court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.
(e) When affidavits are unavailable. -- Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the Court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(f) Affidavits made in bad faith. -- Should it appear to the satisfaction of the Court at any time that any of the affidavits presented pursuant to this Rule are presented in bad faith or solely for the purpose of delay, the Court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

(g) Motions for summary judgment. -- In addition to points and authorities there shall be served and filed with each motion for summary judgment a statement of the material facts as to which the moving party contends there is no genuine issue. Any party opposing such a motion may, within 10 days after service of the motion upon the party, serve and file a concise statement of genuine issues setting forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated. In determining any motion for summary judgment, the Court may assume that the facts as claimed by the moving party are admitted to exist without controversy except as and to the extent that such facts are asserted to be actually in good faith controverted in a statement filed in opposition to the motion.

Rule 57. Declaratory judgments.

The procedure for obtaining a declaratory judgment pursuant to Title 28 U.S.C. § 2201 or otherwise shall be in accordance with these Rules. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The Court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

Rule 58. Entry of judgment.

Subject to the provisions of SCR-Dom. Rel. 54(b): (1) Upon a decision by the Court that a party shall recover only a sum certain or costs or that all relief shall be denied, the Clerk, unless the Court otherwise orders, shall forthwith prepare, sign, and enter the judgment without awaiting any direction by the Court; (2) upon a decision by the Court granting other relief, the Court shall promptly approve the form of the judgment, and the Clerk shall thereupon enter it. A judgment is effective only when so set forth and when entered as provided in SCR-Dom. Rel. 79(a). Entry of the judgment shall not be delayed for the award of costs and fees.

COMMENT
The last sentence of this Rule makes it clear that the Court should not delay the finality of the judgment until a claim for costs and fees is decided.

Rule 59. Amendment of judgments; new trials.

(a) Motion to alter or amend judgment or for new trial. -- A motion to alter or amend judgment or for a new trial may be granted where the interests of justice require. On a motion for a new trial, the Court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) Time for motion. -- A motion to alter or amend judgment or for a new trial shall be filed no later than 10 days after entry of the judgment.

(c) Time for serving affidavits. -- When a motion for new trial is based on affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the Court for good cause shown or by the parties by written stipulation. The Court may permit reply affidavits.

(d) On Court's initiative; notice; specifying grounds. -- No later than 10 days after entry of judgment the Court, on its own initiative, may alter or amend the judgment, or may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the Court may grant a timely motion for a new trial for a reason not stated in the motion. When granting a new trial on its own initiative or for a reason not stated in the motion, the Court shall specify the grounds in its order.

COMMENT
This Rule has been revised and reorganized for clarity. With the exception of the amendment to paragraph (d) explicitly allowing the Court to alter or amend a judgment on its own initiative no later than 10 days after entry of the judgment, the Rule is not intended to modify the substance or effect of SCR-Civil 59 with respect to trials in Domestic Relations actions. Grounds for a new trial under this Rule include manifest error of law or fact, and newly discovered evidence which is material to a significant issue. Similar to the civil rule, a timely motion under this Rule will toll the time for appeal. D.C. App. Rule 4(a)(2).

Rule 60. Relief from judgment or order.

(a) Clerical mistakes. -- Clerical mistakes and errors arising from oversight or omission in judgments, orders or other parts of the record may be corrected by the Court at any time on its own initiative or on the motion of any party and after such notice, if any, as the Court orders. During the pendency of an appeal, such mistakes or errors may be corrected before the appeal is docketed in the appellate court, and while the appeal is pending may be corrected with leave of the appellate court.

(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc. -- On motion and upon such terms as are just, the Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under SCR-Dom. Rel. 59(b); (3) fraud (whether previously denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken.

(c) Finality of judgment. -- A motion under this Rule does not affect the finality of a judgment or suspend its operation. This Rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court.

Rule 61. Harmless error.

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the Court or by any of the parties is ground for granting a new trial or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

COMMENT
Clerical mistakes and errors arising from oversight or omission in judgments, orders or other parts of the record, which may be corrected pursuant to SCR-Dom. Rel. 60(a), constitute harmless error under this Rule.

Rule 62. Stay of proceedings to enforce a judgment.

(a) Automatic stay; exceptions -- Injunctions, receiverships, child custody, support and visitation orders. -- No execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry, except (1) unless otherwise ordered by the Court, an interlocutory or final judgment in an action for an injunction or in a receivership action shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal, and (2) in matters relating to custody or support of or visitation with minor children, express provisions of a Court order inconsistent with this paragraph will supersede the automatic stay provisions of this paragraph. The provisions of paragraph (c) of this Rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

(b) Stay on motion for new trial or for judgment. -- In its discretion and on such conditions for the security of the adverse party as are proper, the Court may stay the execution of, or any proceedings to enforce, a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to SCR-Dom. Rel. 59, or of a motion for relief from a judgment or order made pursuant to SCR-Dom. Rel. 60, or of a motion for amendment to the findings or for additional findings made pursuant to SCR-Dom. Rel. 52(b).

(c) Injunction pending appeal. -- When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the Court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(d) Stay upon appeal. -- When an appeal is taken the appellant may obtain a stay subject to the exceptions contained in paragraph (a) of this Rule upon the posting of a supersedeas bond and service to the parties of notice that the bond has been posted. The bond shall provide security sufficient to satisfy the amount of the judgment not otherwise secured together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, unless the Court after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be.
(e) Stay in favor of the United States, the District of Columbia, or agency of either. -- When an appeal is taken by the United States or the District of Columbia or an officer or agency of either or by direction of any governmental department of either and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

(f) [Deleted].

(g) Power of appellate court not limited. -- This Rule does not limit the power of an appellate

court to stay a judgment or make any other order with respect to the judgment during the pendency of an appeal.

(h) Stay of judgment as to multiple claims or multiple parties. -- The Court may stay enforcement of a final judgment as to fewer than all the claims or the claims of fewer than all the parties until the entry of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit of the judgment to the party in whose favor it was entered.

(i) Motion for termination of stay or for entry of judgment. -- If either entry of judgment or execution thereon has been stayed upon condition that a party make certain periodic payments to another party or perform other acts, and the party at any time fails to make such payments or perform such acts, the other party may move for termination of the stay or entry of judgment. Upon failure of the delinquent party timely to oppose such termination, the Clerk may terminate the stay and issue execution or enter judgment in accordance with the notice given by the motion, in the manner provided in SCR-Dom. Rel. 55 with respect to defaults. If opposition is filed, the notice shall be treated as an opposed motion.

COMMENT
Paragraph (a) exempts from the automatic 10 day stay provision orders relating to custody, support or visitation which by express terms are to take effect within 10 days after entry. To avoid uncertainty as to the effectiveness and enforceability of such orders, the Court should specify the date upon which its provisions take effect. Where an appellant obtains a stay pursuant to paragraph (d), the interest of justice may require that the operation or enforcement of any portion of the judgment against the appellee also be stayed.

Rule 62-I. [Deleted].

Rule 63. Inability of a judicial officer to proceed; recusal.

(a) Inability of a judicial officer to proceed. -- If a trial or hearing has been commenced and the judicial officer is unable to proceed, any other judicial officer may proceed with it upon certifying familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties, but if such other judicial officer is satisfied that such other judicial officer cannot perform those duties because such other judicial officer did not preside at the trial or for any other reason, such other judicial officer may in such other judicial officer's discretion grant a new trial. The successor judicial officer shall at the request of a party recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judicial officer may also recall any other witness.

(b) Recusal.
(1) Recusal for bias or prejudice.

(A) Whenever a party reasonably believes that the judicial officer before whom the matter is to be heard has a personal bias or prejudice, originating from sources outside of the court proceedings in either the pending case or prior cases, for or against a party, that party may file a personal affidavit stating the facts and the reasons for the belief that bias or prejudice exists. The

affidavit shall be accompanied by a certificate of counsel of record stating counsel's belief that the affidavit is submitted in good faith.

(B) Upon the filing of the affidavit of a party and certificate of counsel, the judicial officer shall determine whether or not the affidavit sufficiently alleges bias or prejudice arising outside of the court proceedings in the pending case or prior cases. If the judicial officer so determines, that judicial officer shall not proceed with the matter and the case shall be assigned by the Chief Judge or the Chief Judge's designee to a different judicial officer. If the judicial officer determines that the affidavit does not sufficiently allege such bias or prejudice the judicial officer may continue with the proceedings before the Court.

(2) Recusal absent bias or prejudice. -- A party may move for a judicial officer to recuse himself or herself due to a conflict of interest, personal knowledge of the facts of the case, association with a litigant or any other reason which a party reasonably believes might affect the neutrality of the judicial officer. The judicial officer shall rule on such a motion before proceeding any further with the case.

Rule 63-I. [Deleted].

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS.

Rule 64. Seizure of person or property; attachment before judgment; replevin actions.

(a) Seizure of person or property. -- At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the District of Columbia existing at the time the remedy is sought, subject to the following qualifications: (1) any existing statute of the United States governs to the extent to which it is applicable; and (2) the action in which any of the foregoing remedies is used shall be commenced and prosecuted pursuant to these Rules. The remedies thus available include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, however designated.

(b) Attachment before judgment.

(1) Application and notice to defendant. -- An application for a writ of attachment and garnishment before judgment shall set forth, by affidavit, specific facts meeting the requirements of D.C. Code § 16-501(c) and (d). The application shall be accompanied by a Notice to Defendant on a form provided by the Clerk. The party applying for the writ shall send such notice to the defendant by first class mail at the address shown on the notice, or in case of a foreign corporation to its registered agent, if any, and shall note on the docket the date of issuance. If defendant's address is listed on the notice as unknown, the plaintiff shall file with the notice an affidavit setting forth the plaintiff's reasonable efforts to ascertain defendant's current mailing address.

(2) Issuance. -- An application for a writ of attachment before judgment, together with a bond in accordance with D.C. Code § 16-501(e), shall be submitted as provided in SCR-Family R(a)(2) to the judicial officer, who may require further proceedings before ruling on the application.

(3) Service. -- The writ of attachment shall be served in accordance with D.C. Code § 16-502, and may be served by a special process server.
(4) Answer of garnishee. -- If the writ is accompanied by interrogatories, the garnishee shall file with the Clerk the answer to the interrogatories within 10 days after service of the writ upon the garnishee, and shall serve a copy of the answer upon the defendant and upon the party at whose instance the garnishment was issued. If within 10 days after service of the answer to the interrogatories or such later time as the Court may allow, the party at whose instance the garnishment was issued shall not contest the answer to the interrogatories pursuant to D.C. Code § 16-522, the garnishee's obligations under the attachment shall be limited by the garnishee's answer.

(5) Hearing. -- If a hearing is held as a result of the filing of a traversing affidavit by the defendant or the garnishee pursuant to D.C. Code § 16-506, the plaintiff shall be required to establish the validity or probable validity of the underlying claim and the existence of the ground for issuing the attachment.

(6) Priority of liens. -- For purposes of determining priority of successive liens, a writ of attachment issued under subparagraph (b)(2) of this Rule shall be effective from the date of its delivery to the marshal or other process server.

(7) Expedition of motions to quash. -- All motions to quash attachments shall be heard by the Court on an expedited basis. Upon at least three days' notice to all parties, the Court may in appropriate cases order that the action in which the motion was filed be tried on the merits at the same time the motion is heard.

(8) Discovery. -- For good cause shown, the Court may in its discretion permit discovery in attachment before judgment proceedings in the manner provided in SCR-Dom. Rel. 69.

(c) Replevin actions.

(1) Initiating action. -- A complaint in replevin shall set forth, by affidavit, specific facts meeting the requirements of D.C. Code § 16-3703. Upon filing the action and before process therefor is placed in the hands of the U.S. Marshal or other process server, the plaintiff, personally or by the plaintiff's attorney, shall bring the action to the attention of the judicial officer as provided in SCR-Family R (a)(2).

(2) Setting of hearing date. -- At the time of initiating the action under this Rule the plaintiff may request that the judicial officer set a date for a hearing at which the plaintiff shall be required to establish the probable validity of the claim and the defendant shall be given an opportunity to appear and be heard with respect to whether a writ of replevin should issue. If, upon such application, the judicial officer determines that the plaintiff has filed a verified complaint alleging that the defendant is wrongfully detaining certain specified property which the plaintiff

is entitled to possess, the judicial officer may issue an order directing the defendant to preserve the property which is the subject of the action in the defendant's possession or under the defendant's control so as to keep it amenable to the process of the Court pending further order of the Court. The order shall also indicate the date on which the plaintiff's application for a writ of replevin will be brought on for hearing and shall inform the defendant that the defendant may be heard at that time, with or without witnesses, on whether the writ should issue.
(3) Notice to defendant. -- The order shall direct the plaintiff to cause a copy of the summons, complaint, and order to be served upon the defendant at least five days prior to the date set for the hearing. If they are not served by that time, the plaintiff shall apply to the judicial officer to whom the case is assigned to set a later hearing date which will provide the defendant with sufficient time to make adequate preparation therefor. If any order entered under this paragraph (c), the judicial officer may include such requirements as will accomplish prompt and expeditious notice to the defendant.

(4) Issuance of writ after hearing. -- At the conclusion of the hearing, the judicial officer may authorize the issuance and execution of a writ of replevin or may, if it appears just, permit all or part of the property to remain in the possession of the defendant pending further order of the Court. In the latter event, the judicial officer may require the defendant to post an appropriate surety bond or other undertaking or may otherwise provide for the protection of the property pursuant to D.C. Code § 16-3708.

(5) Issuance of writ prior to hearing. -- In making the initial application to the judicial officer to whom the case is assigned, the plaintiff may apply for issuance to the writ without prior adversary hearing on the ground that there is an immediate danger that the defendant will destroy or conceal the property in dispute, or on any other ground set forth in D.C. Code § 16-501(d)(2), (3), (4), or (5) as a basis for attachment before judgment. Upon such application, supported by affidavit or sworn testimony reciting specific facts which tend to establish the grounds therefor, the judicial officer may, if deemed appropriate, authorize the immediate issuance of the writ prior to the hearing. If issuance is authorized, the judicial officer shall enter in the record findings of fact and conclusions of law which state the basis of the need for such immediate issuance. The defendant against whom a writ has been issued in this manner may, on not less than 24 hours notice to the plaintiff, apply to the Court to have the writ vacated. If such writ issues, a hearing shall take place on the fifth court day after execution of the writ. It shall be the duty of the plaintiff's counsel to notify the Court promptly of the execution of the writ.

(6) Trial. -- Trials of all actions in replevin shall be expedited.

Rule 64-I. [Deleted].

Rule 65. Injunctions.

(a) Preliminary injunction.

(1) Notice. -- No preliminary injunction shall be issued without notice to the adverse party.

(2) Consolidation of hearing with trial on merits. -- Before or after the commencement of the hearing of an application for a preliminary injunction, the Court may order the trial of the action

on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial.

(b) Temporary restraining order; notice; hearing; duration. -- A temporary restraining order may be granted without written or oral notice to the adverse party or the adverse party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or the adverse party's attorney can be heard in opposition, and (2) the Court is satisfied that either (i) the applicant has made all reasonable efforts under the circumstances to furnish to the adverse party's attorney, if known, or otherwise to the adverse party, at the earliest practicable time prior to the hearing on the motion for such order (A) actual notice of the hearing and (B) copies of all pleadings and other papers filed to date in the action or to be presented to the Court at the hearing; or (ii) that bodily harm is likely to occur prior to the hearing on the temporary restraining order if such notice be given. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the Clerk's Office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the Court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered on record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and take precedence over all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if the party does not do so, the Court shall dissolve the temporary restraining order. On 2 days notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the Court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the Court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) Security. -- No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the Court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States or of the District of Columbia, or of an officer or agency of either. Where a temporary restraining order or preliminary injunction is granted for the physical protection of any party to the action or for custody of children, no security shall be required of the applicant for such order or injunction.

(d) Form and scope of injunction or restraining order. -- Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

Rule 65-I. [Deleted].

Rule 66. Receivers appointed by the Superior Court.

An action wherein a receiver has been appointed shall not be dismissed except by order of the Court.

Rule 67. Deposit in Court; recording money paid to or by clerk.

(a) Deposit in court. -- Upon motion, the Court may allow a party to deposit with the Court all or any part of a sum of money or any other thing capable of delivery which is the subject to an action, whether or not that party claims all or any part of such sum or thing. The party making the deposit shall serve the order permitting deposit on the Clerk of the Court. Money paid into Court under this paragraph shall be deposited and withdrawn in accordance with the provisions of D.C. Code § 11-1723(a)(2) or any like statute.

(b) Recording money paid to or by Clerk. -- The Clerk shall receive and keep proper accounts of all money deposited or paid into or out of the Clerk's office and make such reports concerning same as may be required by law or ordered by the Court.

Rule 67-I. [Deleted].

Rule 68. Offer of judgment.

(a) Offer of judgment; liability for costs. -- At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the Court shall enter judgment, unless it finds that the provisions with respect to custody, visitation or with support are not in the best interests of the child. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the Court finds that the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not prelude a subsequent offer. When the liability of one party to another has been determined by order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time but not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

(b) Costs. -- For purposes of this Rule, costs may include such attorney's fees as may be awarded by statute or otherwise in connection with the pending action.

COMMENT

Because attorney's fees are routinely statutorily at issue in domestic relations cases, paragraph (b)

provides that the fees incurred after the making of an offer of judgment are properly awardable as costs under this Rule. See *Kelly v. Clyburn,* 490 A.2d 188 (D.C. App. 1985). See D.C. Code § 16-911, 16-918.

Rule 68-I. [Deleted].
COMMENT
SCR-Civil 68-I has been deleted as not appropriate to Family Division practice.

Rule 69. Post-judgment collection.

(a) Method of collection. -- The methods for collecting a money judgment are (1) execution, by which money or assets in the possession of the judgment debtor are seized; (2) attachment, by which money or other assets belonging to the judgment creditor, but in the possession of a third party are frozen and eventually subjected to a condemnation order; and (3) garnishment, which is a form of attachment relating to wages.

(1) Execution. -- The judgment creditor shall file and have issued by the Clerk a Writ of Execution. The judgment creditor shall serve the writ pursuant to SCR-Dom. Rel. 5 on the judgment debtor. A Writ of Execution may be issued within three years after (i) the expiration of any stay of execution, or (ii) it could have been issued pursuant to the law and the Rules of this Court. A Writ of Execution is returnable on or before the sixtieth day after its issuance. If a writ is issued and returned unsatisfied in whole or in part within the three year period, or any period of extension of the judgment, an alias writ may be issued during the life of the judgment.

(2) Attachment after judgment. -- The judgment creditor must file and have issued by the Clerk a Writ of Attachment. The judgment creditor shall serve the Writ of Attachment pursuant to SCR-Dom. Rel. 5. The Writ of Attachment includes interrogatories to be answered by the person to be served with the writ. Within ten days after service of the writ, the recipient shall file the answer to interrogatories with the Clerk and serve a copy of the answers to the interrogatories upon the parties. Within (i) four weeks after the answers to the interrogatories were due but not filed or (ii) within four weeks after the recipient has filed the answers to the interrogatories or (iii) within such later time as may be authorized by the Court upon a motion made within the applicable period, the judgment creditor shall file an application for judgment of condemnation or recovery against the third party. If the judgment creditor fails to make a timely application, the attachment shall be dismissed.

(3) Garnishment of wages after judgment.

(A) Writ of attachment for wages. -- The judgment creditor must file and have issued by the Clerk a Writ of Attachment (Garnishment of wages, etc.). The judgment creditor shall serve the writ pursuant to SCR-Dom. Rel. 5 upon the employer-garnishee. The writ includes interrogatories to be served with the writ. Within (i) four weeks after the answers to the interrogatories were due but not filed or (ii) within 15 weeks of the date on which a garnishee fails to make payment due under the writ or (iii) within such later time as may be authorized by the Court upon a motion made within the applicable period, the judgment creditor shall file an

application for judgment against the third party. If no timely judgment of condemnation or of recovery has been applied for or entered, the garnishment shall be dismissed.

(B) Reporting credits against judgment. -- It shall be the duty of a judgment creditor who is receiving payments on account of the judgment from an employer-garnishee and who shall receive credits upon said judgment from a source other than said employer-garnishee to notify said employer-garnishee and the Clerk in writing of such receipt within 10 days thereafter, including the date, amount, and source thereof.

(C) Schedule and receipt for payments. -- Every judgment creditor receiving payments from an employer-garnishee pursuant to the issuance of a wage attachment shall be obligated to credit the payments first against the accrued interest on the unpaid balance of the judgment, if any, second upon the principal amount of the judgment, and third upon those attorney's fees and costs actually assessed in the cause, and shall send a receipt to the garnishee within five days after such payment, which receipt shall set forth the application of such payment pursuant to the aforesaid schedule.

(D) Noncompliance. -- If a judgment creditor fails to comply with this Rule or with the applicable statutory provisions, the Court may in its discretion, on motion of any interested party, enter an order vacating and setting aside the attachment and continuing levy of said judgment creditor then in force and effect, but without prejudice to the refiling and serving of another attachment, which shall follow prior attachments of wages of the judgment debtor in the hands of the employer-garnishee, and may enter a judgment of a reasonable attorney's fee and tax costs in favor of the party filing the motion to vacate and set aside the attachment.

(E) Garnishment docket card. -- Each Writ of Attachment for wages shall be accompanied by a garnishment docket card prepared by the judgment creditor or the judgment creditor's attorney. The judgment creditor or the judgment creditor's attorney shall supply the Social Security number of the judgment-debtor, if known. The Clerk shall furnish the garnishment docket card on a form approved by the Court.

(b) Discovery in aid of collection. -- All discovery procedures authorized by SCR-Dom. Rel. 26-37 are available to the judgment creditor in the manner prescribed by these Rules, except that a subpoena ad testificandum addressed to a person other than the judgment debtor and a subpoena duces tecum shall issue only upon order of the Court. The first subpoena ad testificandum or notice of deposition addressed to the judgment debtor may issue without Court order, but any subsequent subpoena or notice so addressed shall issue only upon order of the Court. Nothing contained herein shall be construed to require that a party to the action be paid a witness fee for attendance.

(c) Oral examination in Court. -- The judgment creditor may summon the judgment debtor and, upon leave of court, any other person to appear in court on a date certain and submit to oral examination respecting execution of any judgment rendered. Any person so summoned may, upon leave of court, be required to produce papers, records, or other documents at the examination. If the person summoned was personally served but fails to appear, the Court may, upon request, issue a bench warrant for the person's arrest.

(d) Other claims to property. -- Before the final disposition of the property attached or its proceeds (except where it is real property), any person may file a motion and affidavit setting forth a claim thereto or an interest in or lien upon the same. Without other pleadings, the Court shall try the issues raised by such claim and may make all orders necessary to protect any right of the claimant. Any party to such proceeding may demand trial by jury by filing such demand within five days of the filing of such motion and affidavit.

Rule 69-I. [Deleted].

Rule 69-II. [Deleted].

Rule 70. Judgment for specific acts; vesting title.

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the Court may direct the act to be done at the cost of the disobedient party by some other person appointed by the Court and the act when so done has like effect as if done by the party. On application of the party entitled to performance and approval by the Court, the Clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The Court may also in proper cases adjudge the party in contempt. If real or personal property is within the District of Columbia, the Court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. On application of a party entitled to possession, and approval of the Court, the Clerk shall issue a writ of execution or assistance.

Rule 71. Proceedings on behalf of and against person not parties; proceedings against sureties.

(a) Proceedings on behalf of and against person not parties. -- When an order is made in favor of a person who is not a party to the action, that person may enforce compliance with the order by the same process as if a party; and, when compliance with an order may be lawfully enforced against a person who is not a party, that person is liable to the same process for enforcing compliance with the order as if a party.

(b) Proceedings against sureties. -- Whenever these Rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the Court and irrevocably appoints the Clerk of the Court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the Court prescribes may be served on the Clerk of the Court, who shall forthwith mail copies to the sureties if their addresses are known.

Rule 71A. [Deleted].

COMMENT
SCR-Civil 71A has been deleted as not appropriate to Family Division practice.

Rule 71A-I. [Deleted].

COMMENT
SCR-Civil 71A-I has been deleted as not appropriate to Family Division practice.

IX. APPEALS.

Rule 72. Enforcement of foreign judgments.

A copy of a judgment, decree or order of a court of the United States, or of any other court entitled to full faith and credit in the District of Columbia, may be filed with the Clerk by the party who obtained it or by that party's attorney. The judgment sought to be filed shall be authenticated in accordance with District of Columbia law. The party or counsel shall accompany the filing with the information called for in any form prescribed by the Clerk, and shall pay the filing fee established by the Court. A foreign judgment filed with the Clerk shall have the same effect and be subject to the same procedures, defenses, or proceedings for reopening, vacating, or staying as a judgment of the Superior Court and may be enforced or satisfied in the same manner, subject to the provisions of the Uniform Enforcement of Foreign Judgments Act of 1990, D.C. Code §§ 15-351 through 15-357.

COMMENT
Rule 72 is intended to implement the Uniform Enforcement of Foreign Judgments Act of 1990 (D.C. Code §§ 15-351 - 15-357), which has been adopted by the District of Columbia. As a "Uniform Act," it should be construed to effectuate its general purpose to make consistent the law of all jurisdictions that enact it. Accordingly, where there are no interpretations of the Act's provisions in this jurisdiction, guidance may be found in the decisions of other jurisdictions that have adopted the Act. While the Act was intended to provide a simple and expeditious procedure to enforce a foreign judgment in the District of Columbia, it does not impair the right of a party to resort to the cumbersome prior practice of bringing suit to enforce a foreign judgment.

The Rule is not intended to preempt the provisions of other locally-adopted uniform acts dealing with Family Division matters. See the Uniform Child Custody Jurisdiction Act (D.C. Code §§ 16-4501 - 4524 [now the Uniform Child-Custody Jurisdiction and Enforcement Act, D.C. Code § 16-4601.01 et seq.]); the Uniform Reciprocal Enforcement of Support Act (D.C. Code §§ 46-701 - 726 [repealed]).

Rules 73 to 76. [Deleted].

X. SUPERIOR COURT AND CLERK.

Rule 77. Superior Court and Clerk.

(a) Clerk's Office and orders by Clerk. -- The Clerk's Office with the Clerk or a deputy in attendance shall be open during posted hours Monday through Friday. When authorized by law, the Clerk may issue process, enter defaults or judgments by default, and conduct other proceedings which do not require allowance or order of the Court; but the Clerk's action may be suspended or altered or rescinded by the Court upon cause shown.

(b) Notice of orders or judgments. -- Immediately upon the entry of an order or judgment signed or decided out of the presence of the parties or their counsel, the Clerk shall serve a copy of the order or judgment by mail in the manner provided for in SCR-Dom. Rel. 5 upon each party who is not in default for failure to appear, and shall indicate the date of mailing in the docket. Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by these Rules; but any party may in addition serve a notice of such entry in the manner provided in SCR-Dom. Rel. 5 for the service of papers. Lack of notice of the entry by the Clerk does not affect the time to appeal or relieve or authorize the Court to relieve a party for failure to appeal within the time allowed, except as permitted in the Rules for the District of Columbia Court of Appeals.

Rule 77-I.

Rule 77-II. [Deleted].

Rule 78. [Deleted].

COMMENT
SCR-Civil 78 has been deleted as not appropriate to Family Division practice.

Rule 78-I. [Deleted].

Rule 79. Books and records kept by the Clerk and entries therein; custody and copies of papers filed.

(a) Docket. -- The Clerk shall keep a "docket" and shall enter therein each action to which these Rules are made applicable. The docket may be kept solely by computer or electronic means. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the docket. All papers filed with the Clerk, all process issued and returns made thereon, all appearances, orders, and judgments shall be entered chronologically on the docket assigned to the action and shall be marked with its file number. These entries shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the Court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made.
(b) Judgments and orders. -- The Clerk shall keep a copy of every judgment or order issued by a judicial officer.

(c) Indices: Calendars. -- Suitable indices of the dockets and and [sic] of every judgment and order referred to in paragraph (b) of this Rule shall be kept by the Clerk under the direction of the Court.
(d) Other books and records of the Clerk. -- The Clerk shall also keep such other books and records as may be required from time to time by the Executive Officer of the District of Columbia Courts subject to the supervision of the Chief Judge.

(e) Inspection and copying of files and records. -- Inspection and copying of the files and records of this Division shall be permitted unless prohibited by statute, rule or order of the Court. No Court file or duly filed pleading in any case shall be removed or carried from the courthouse without the written order of a judge assigned to the Division.

(f) Verification of filing. -- Upon receiving and filing any paper the Clerk shall stamp the date of filing on the face of the paper in any manner so as to be legible. If any person filing any paper requests a verification of such filing, a copy of the paper provided by such person shall be stamped to show the time and date of the filing. Such file-stamped copy shall be prima facie evidence in any proceeding that the original of the paper was filed as shown by the file stamp.

Rule 79-I. [Deleted].

Rule 80. [Deleted].

XI. GENERAL PROVISIONS.

Rule 81. [Deleted].

COMMENT
SCR-Civil 81 has been deleted as not appropriate to Family Division practice.

Rule 82. [Deleted].

Rule 83. [Deleted].

COMMENT
[Deleted]. (Mar. 15, 1973.)

Rule 83.I. [Deleted].

Rule 84. Forms.

Forms supplied by the Clerk are sufficient under the Rules and are intended to indicate the simplicity and brevity of statement which the Rules contemplate.

Rule 85. [Deleted].

Rule 86. Effective date of rule amendments or additions.

Unless otherwise ordered by the Court, any amendments of or additions to these Rules take effect on their date of promulgation and govern all proceedings in actions brought thereafter and also all further proceedings and actions then pending, except to the extent that in the opinion of the Court their application in a particular action pending on such effective date would not be feasible or would work injustice.

Rule 86-I. [Deleted].

XII. PRACTICE BEFORE THIS COURT.

Rule 101. Attorneys: Appearance; withdrawal; appointment; termination.

(a) Who may practice.

(1) Bar membership. -- An attorney who is a member in good standing of the District of Columbia Bar may enter an appearance, file pleadings and practice in this Court.

(2) Representation by counsel. -- No person other than one authorized by this Rule shall be permitted to appear in this Court in a representative capacity for any purpose other than securing a continuance. No corporation shall appear in the Division except through an attorney authorized by this Rule. However, nothing in this Rule shall be construed to prevent any natural person from prosecuting or defending any action in the person's own behalf if the person is without counsel.

(3) Attorneys not members of the District of Columbia Bar.

(A) Appearances *pro hac vice*. -- An attorney who is a member in good standing of the bar of any United States Court or of the highest court of any state but who is not a member in good standing of the District of Columbia Bar, if granted permission by the Court, may enter an appearance, file pleadings, and participate in proceedings in this Court, *pro hac vice*, provided that a member in good standing of the District of Columbia Bar also enters an appearance in the case. The District of Columbia attorney shall be jointly responsible for the case, and shall sign all papers filed, including the motion to appear *pro hac vice* and certificate of service, and shall attend all subsequent proceedings in the action unless this latter requirement is waived by the judicial officer presiding at the proceeding in question.

(B) Request to appear *pro hac vice*. -- An attorney seeking permission to appear under subparagraph (a)(3)(A) shall (i) file a motion stating the attorney's name, address, telephone number, fax number, if any, the jurisdiction(s) where the attorney is admitted to practice, and the number of times in the current calendar year the attorney has received permission to appear under this Rule, certifying that the attorney has read, is familiar with, and will act in full compliance with the Domestic Relations Rules of the Court, and (ii) comply with District of

Columbia Court of Appeals Rule 49(c). The attorney shall serve a copy of the motion on the District of Columbia Court of Appeals' Committee on Unauthorized Practice. Service shall be made by hand-delivery or mail and shall be proved by the filing of a certificate of the attorney showing the date and manner of service.
(4) State Attorneys General. -- A State Attorney General or the attorney general's designee, who is a member in good standing of the bar of the highest court in any state or any United States court, may appear and represent the state or any agency thereof, irrespective of (1)-(3) above.

(b) Entry of appearance. -- An attorney eligible to appear may enter an appearance in a domestic relations case by signing any pleading or other paper described in SCR-Dom. Rel. 5(a), filed by or on behalf of the party the attorney represents, or by filing a written praecipe noting the entry of the attorney's appearance and listing the attorney's office address, telephone number, fax number, if any, and Bar number.

(c) Withdrawal of appearance.

(1) Withdrawal by praecipe. -- An attorney may withdraw an appearance by filing a praecipe signed by the attorney and the attorney's client, noting such withdrawal, provided that (1) a trial date has not been set in the case, and (2) another attorney enters or has entered an appearance on behalf of the client, or the client states in writing that the client intends to represent himself or herself. The withdrawal shall not be grounds for a request for an extension of time or a continuance.

(2) Withdrawal by motion.
(A) Generally. -- Except where withdrawal is made by praecipe pursuant to subparagraph (c)(1) of this Rule, an attorney's appearance in an action may be withdrawn only by order of the Court upon motion by the attorney served upon all parties or their attorneys. The Court may deny the attorney's motion for leave to withdraw if the attorney's withdrawal would unduly delay trial of the case, be unduly prejudicial to any party, or otherwise not be in the interests of justice.

(B) Notice to client. -- Unless the client is represented by another attorney or the motion is made in open court in the client's presence, a motion to withdraw an appearance shall be accompanied by a certificate of the moving attorney listing the client's last known address and stating that the attorney has served upon the client a copy of the motion and a notice advising the client to obtain other counsel, or, if the client intends to represent himself or herself or to object to the withdrawal, to so notify the Clerk in writing within 10 days of service of the motion upon the client.

(C) Copy of order to client. -- Except where leave to withdraw has been granted in open court in the presence of the affected client, the Clerk shall send to the affected client by first class mail, postage prepaid, a copy of any order granting leave to withdraw.

(d) Appearances by inactive attorneys. -- An inactive member of the District of Columbia Bar may enter an appearance, file pleadings, and practice in a particular case if (1) the attorney is affiliated with a legal services or referral program; (2) the case is handled without a fee; and (3) the attorney files with this court, and the District of Columbia Court of Appeals' Committee on

Unauthorized Practice a certificate that the attorney is providing representation in that particular case without compensation.

(e) Appointment of attorneys; compensation; termination.
(1) Appointment of attorneys. -- In any case where the Court deems it necessary or proper, it may appoint an attorney for a defendant who has appeared or answered. In a case involving custody of a minor child, the Court may appoint an attorney to appear on behalf of the child and represent the child's best interest as provided in D.C. Code § 16-918(b).

(2) How appointed.

(A) For defendant. -- A party seeking the appointment of an attorney to represent the defendant shall make the request by filing a praecipe. Upon the Court's determination that the request for appointed counsel should be granted, it shall notify the party that an order appointing counsel for the defendant shall take effect upon the payment of the fee, as determined by the Court. In cases within this paragraph in which the Court has allowed the party to proceed without prepayment of attorney fees, the order shall take effect upon docketing.

(B) For minor child. -- A party seeking the appointment of an attorney to represent a minor child shall make the request by motion served on all other parties. Upon the Court's determination that the request for appointed counsel should be granted, it shall issue an order appointing counsel for the minor child and apportioning payment of such fees as determined by the Court.

(3) Time for filing answer. -- Within 30 days of the date of appointment, unless for good cause shown the time is extended by order of the Court, the appointed attorney shall, if the defendant has already filed a written answer under oath, either adopt the defendant's answer by filing a praecipe so stating, or file a new answer signed by the defendant under oath, or, if the defendant refuses to sign the new answer under oath, take such other action as the attorney deems appropriate.

(4) Termination of appearance. -- Notwithstanding any rule of Court, the appearance of any appointed or other attorney in any action under D.C Code Title 16, Chapter 9 shall be deemed to have terminated for all purposes upon completion of the case ending in a judgment, adjudication, decree, or final order form which no appeal has been taken when the time allowed for an appeal expires, and, if notice of appeal has been entered, upon the date of final disposition of the appeal. There shall be no action required of any person or attorney under this subparagraph, but the Court may suspend the termination of the appearance on its own motion, or on the motion of any party to the case prior to the expiration of the time for appeal.

COMMENT
Paragraph (e). Pursuant to D.C. Code § 16-918(a), paragraph (e) of this Rule provides that the Court may appoint an attorney for a defendant who has appeared or answered. While the statute is broad enough to encompass the appointment of an attorney for a defendant who has neither appeared nor answered, such an appointment would be necessary only in extraordinary circumstances. Where such circumstances exist, the Court should consider outlining the scope of representation expected.

Subparagraph (e)(2). Consistent with current practice, it is contemplated that in most cases, the amount ordered to be prepaid for appointment of counsel pursuant to subparagraph (e)(3) will be the minimum fee set by the Board of Judges of the Superior Court for such appointments. Subparagraph (e)(3). Where an appointed attorney is unable to obtain the sworn signature of the defendant on an answer, subparagraph (e)(3) contemplates actions such as a request for appointment of a guardian ad litem or permission to withdraw the attorney's appearance in the case.

Rule 102. [Deleted].

Rule 103. [Deleted].

XIII. MISCELLANEOUS PROVISIONS.

Rule 201. Transcripts.

(a) Obtaining transcripts. -- Any person who has made suitable arrangements to pay the appropriate fee, shall be entitled to obtain a transcript of all or any part of any recorded judicial proceedings other than those under seal.

(b) Endorsement on transcript. -- Each transcript obtained in accordance with this Rule shall bear the following endorsement upon its cover page:

"This transcript represents the produce of an official reporter or transcriber, engaged by the Court, who has personally certified that it represents the testimony and proceedings of the case as recorded."

(c) Transcript on appeal. -- Upon the completion of any transcript in a matter to be brought before the appellate court, the reporter or transcriber shall notify the trial court and counsel that the transcript has been completed and will be forwarded to the Court of Appeals within five days. The notice shall inform counsel that any objections to the accuracy of the transcript must within the five days be presented to the trial court and served on opposing counsel in the manner prescribed in SCR-Dom. Rel. 5. Objections raised by the Court sua sponte shall be made known to the parties who shall be given an opportunity to make appropriate representations to the Court before the objections are resolved. All objections shall be resolved by the trial court on the basis of the best available evidence as to what actually occurred in the proceedings.

(d) Security of original transcript. -- In a case in which a transcript is ordered by any person, the reporter or transcriber shall deliver to the person a copy or copies of any transcript prepared. The original of the transcript bearing the required certificate shall be filed by the reporter or transcriber with the Clerk of the court and shall not be changed in any respect except pursuant to rule of court. No change in any transcript may be made by the presiding judicial officer except on notice to the parties to the proceeding. Where any changes are made in the transcription of proceedings the corrections and deletions shall be shown.

(e) Stenographic report or transcript as evidence. -- Whenever the testimony of a witness at a trial or hearing which was stenographically reported is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified in accordance with paragraph (b) of this Rule.

COMMENT
For provisions with respect to recording of court proceedings, see SCR-General Family N.

Rule 202. Fees. [Excluded].

COMMENT
SCR-Civil 202 is excluded since Family Division fees are covered in SCR-General Family Rule C.

Rule 203. [Deleted].

XIV. FIDUCIARY RULES.

Rules 301 to 308. [Deleted].

COMMENT
SCR-Civil 301-308 deleted as not appropriate to Family Division practice.

Rule 309. [Deleted].

XV. DOMESTIC RELATIONS SPECIAL RULES.

Rule 401. Reciprocal enforcement of support proceedings.

(a) Proceedings in which the District of Columbia is the initiating jurisdiction ("I" cases). Commencement of action. -- A reciprocal enforcement of support action is commenced by filing with the Court an original and 3 copies of the testimony expected to be adduced by plaintiff, and the deposit of Court costs, if any, required by the jurisdiction to which the case is to be forwarded. If no statement of testimony is filed by plaintiff, the Court may order a transcript of testimony adduced at trial to be prepared in quadruplicate by the Court reporter at the expense of the plaintiff.

(b) Proceedings in which the District of Columbia is the responding jurisdiction ("R" cases).

(1) Jurisdiction of defendant. -- Jurisdiction of the defendant is obtained by service upon the defendant of a Notice of Hearing and Order Directing Appearance, together with a copy of a petition or complaint and supporting documents forwarded by the initiating jurisdiction and filed in this Division of the Court. Service shall be had as provided in SCR-Dom. Rel. 4(a)(2).

(2) Answer. -- A defendant shall file an answer in accordance with SCR-Dom. Rel. 12(a). The defenses raised therein shall be as specified by Rule SCR-Dom. Rel. 8(b).

(3) Reply. -- Upon application, plaintiff may, in the discretion of the Court, be permitted to file a reply to defendant's answer and such responsive pleading shall be filed within such time as the Court may determine reasonable, depending upon the circumstances of the case.

(4) Orders -- Subsequent action. -- If, in any other action within this Division, the question of support has been an issue or becomes an issue involving the same parties to a reciprocal support action the Court may either specify that any award made shall be paid through the reciprocal support order or dismiss the same in lieu of a new judgment. Any arrearages existing at the time of such dismissal shall be incorporated in the new order.

(5) Dismissal. -- If the Court is notified by an initiating state that a case is no longer active in that state the Clerk shall enter a dismissal of the action, notify the initiating state and provide it with a certification of the financial record. Notice shall also be given to counsel of record.

(6) Referral of cases. -- Upon receipt by the Clerk of a petition which names a respondent who is not within the territorial jurisdiction of this Court the Clerk shall, if able to ascertain the appropriate jurisdiction, refer the case to that jurisdiction without recourse to the initiating state. Notice of this referral shall be made to the initiating jurisdiction.

COMMENT
This Rule embodies the former Domestic Relations Rule on reciprocal support with some modifications to cover areas where experience has proven a need. Title 30A, Chapter 3 of the D.C. Code embodies the Uniform Interstate Family Support Act of 1995 and is quite comprehensive in its coverage, so that there is no necessity for more rules.

Rule 402. [Deleted].

Rule 403. Payment of moneys through Court.

Unless good cause to the contrary be shown, all moneys due and payable under any order of this Court for spousal support and child support shall be paid to the Family Finance Office of the Court. All money so received shall be promptly disbursed to the persons or agencies entitled thereto.

COMMENT
For the statutory provision on the payment of moneys through the Court, see D.C. Code § 16-911(c).

Rule 404. Social service referrals.

In any proceeding involving custody or visitation the Court may order a party to submit to an evaluation by the office of the Director of Social Services as detailed in an order of reference. Any written reports made as a result therefrom shall be made available only to the assigned judge, counsel of record, and unrepresented parties. The reports shall be filed in the Court jacket only when ordered by the Court and may be filed under seal.

COMMENT
Under D.C. Code § 11-1722(a) and (d) the Division will have the assistance of the Director of Social Services for purposes of home studies, psychological examinations, or other evaluations. See Superior Court Intrafamily Rule 11(e) for provisions permitting the Court to order treatment and counseling in intrafamily proceedings.

Rule 405. Paternity.

(a) Commencement. -- A paternity proceeding pursuant to D.C. Code § 11-1101(11) is commenced by filing a verified petition with the Court which shall set forth the jurisdiction of the Court and all relevant information concerning the allegation of paternity, including, but not limited to, the relationship of the petitioner to the child or children, the approximate date of conception (and date and place of birth if appropriate), the alleged natural father of the child or children, a prayer for relief and for reasonable attorney's fees which may in appropriate cases be assessed against the natural father upon a finding of paternity.

(b) Jurisdiction and process. -- Jurisdiction over the respondent shall be obtained by personal service upon him of a notice of hearing and order directing appearance on a date certain, together with a copy of the petition, pursuant to Rule 4 of these rules governing service of a notice of hearing and direction to appear.

(c) Answer.

(1) The respondent shall file an answer within 20 days after service upon him of the petition and notice of hearing and order directing appearance. If an answer is not timely filed and the respondent obtains leave of Court to file an answer or is directed by the Court to file an answer, such answer must be filed within 10 days from the date of the extension, unless additional time is specified by the Court or allowed by the Court pursuant to written motion filed before the last day of the first extension.

(2) Upon the filing of a timely answer, or the filing of an answer as allowed by the Court under subparagraph (c)(1) of this Rule, the case shall be set for hearing on the contested calendar. If the date set for the contested hearing is different from the return date specified in the order directing appearance, then the respondent shall be relieved of his obligation to appear in Court on the return date.
(d) Proceedings before hearing commissioners.

(1) All cases brought pursuant to D.C. Code § 11-1101(11) shall be referred to a hearing commissioner sitting in the Family Division who shall:

(A) Determine whether paternity will be acknowledged and, if so, enter an adjudication of paternity and thereafter conduct a hearing on support as provided in SCR Family D(b)(1); or

(B) Determine whether to order medical, genetic blood or tissue grouping tests and, if so, thereafter hear and determine the issues of paternity and amount of support or, if the case involves complex issues requiring judicial resolution, refer it to a judge for determination of those issues.

(2) At any time following the adjudication or acknowledgment of paternity in a case before the Court, the Court may refer the case to a hearing commissioner of the Family Division pursuant to the provisions of General Family Rule D, for entry of an order as to the amount of support.
(e) Procedure upon failure of respondent to respond. -- Where the respondent fails to file an answer as allowed by the Court under subparagraph (c)(1) of this Rule, or otherwise fails to respond appropriately, the issues of paternity and amount of support may be heard and determined ex parte on the return date specified in the order directing appearance. If the Court is satisfied that (1) there is uncontroverted proof that respondent is the natural father of the child as alleged by the petitioner, and (2) justice to the child requires an immediate judicial determination of the petition, which shall not be defeated by respondent's non-appearance, it may enter an order adjudging respondent to be the natural father of the child and fixing an appropriate amount of support, or alternatively, may refer the issue of support to a hearing commissioner for determination of the appropriate support amount and entry of a final order.

(f) Blood tests.

(1) The Court, on its own motion or on the motion of a party, may, pursuant to D.C. Code § 16-2343 require the child, the mother, an alleged parent, or the other parent to submit to medical, genetic blood or tissue grouping tests, which may include the human leukocyte antigen test and the red cell blood grouping tests.

(2) The Court may appoint the examiners of genetic markers to perform the tests or the examiners may be chosen by the consent of the parties.

(3) Costs.

(A) The costs for the tests and expert witnesses appointed by the Court shall be paid by the parties.

(B) The Court, upon written motion accompanied by a sworn financial statement of the alleged parent, may order that the District of Columbia, if it is a party to the action, pay the costs upon a finding that the alleged parent does not have sufficient resources to pay the costs.

(C) The parties may consent to an agreement for the payment of such costs.

(4) Admissibility.

(A) Pursuant to D.C. Code Section 16-2343.1 [§ 16-2343.01, 2001 Ed.], a certified document of

the chain of custody of the test specimens is competent evidence to establish the chain of custody for any test ordered or agreed to by the parties under this Rule.

(B) A party wishing to object to the test results shall file a written motion, including specific objections, within 45 days of the date the test results were mailed by the Court to the party. The Court shall not accept such a motion less than 5 days prior to the first trial date following the taking of the tests, unless good cause is shown. A party wishing to object to the admission of test results at trial without expert testimony shall file that objection in writing at least 20 days prior to trial or the test results shall be admitted without expert testimony. A party intending to call an expert witness to testify about the test must notify the other party and the Court in writing at least 20 days prior to trial. Such notice must contain the substance of the testimony which the expert will provide.

(C) The Court shall prior to the trial date decide all motions to exclude the test results and written objections to the test results, and shall rule on the admissibility of the test results and whether or not an expert witness is required.

(5) Unless a party files timely objections pursuant to this subsection:

(A) The party waives the party's objections to the testing procedures, the admission into evidence of the results of the test and the report on the statistical probability of paternity. However, the Court may upon a showing of extraordinary circumstances extend the time for filing objections.

(B) The verified results of the tests and the report are admissible into evidence at a hearing or other proceeding regardless of the presence or non-presence of parties having notice of the action.

(C) Whenever the results of the tests and report exclude the alleged parent as the parent of the child, that evidence shall be conclusive evidence of non-paternity, unless contrary test results are received by the Court.

(6) The Court may order that additional tests be made.

(7) Sanctions. -- If any party refuses to submit to a test the Court may impose sanctions or hold the refusing party in contempt.

(g) Certificates of judgment of paternity. -- The Clerk of the Court shall issue a Certificate of Judgment of Paternity pursuant to D.C. Code § 16-2346(a) upon entry of a final judgment.

COMMENT

The purpose of this Rule is to implement the Parentage and Support Proceedings Reform Act of 1984. The intent of that act is to assist in making scientific blood test results available to the trier of fact in actions involving the issue of disputed paternity. To ensure that valid blood and tissue typing test results, including the results of the human leukocyte antigen test, are readily available as evidence to the trier of fact, the Rule provides that such test results shall be decided before trial. The intent of the act is also to prevent the situation where such tests, although performed,

are not admitted at trial due to some correctable objection to the test results or procedures. It is also contemplated that expert witnesses should only be necessary in rare cases and that the test results and the reports should generally be admitted into evidence without the necessity of an expert witness testifying.
Section (c) replaces SCR-Dom. Rel. 12(a) for paternity proceedings. Section (d) represents one use of hearing commissioners as authorized in SCR-General Family D. Section (e) allows an adjudication of paternity without the presence of the respondent but does not allow a default judgment on the pleadings alone. *Cf. District of Columbia v. J.R.M.*, App. D.C., 521 A.2d 1152 (1987).
Note: SCR-Dom. Rel. 26 through 37 make pretrial discovery available in paternity proceedings.

Rule 406. Writ of *ne exeat*.

(a) Application. -- Every application for writ of *ne exeat* shall be by way of petition (which may be part of the original pleading), under oath, which must set forth with particularity the intention of either party to wrongly defeat the other party's right to the custody of a minor child or children, or the intention of the adverse party to leave the jurisdiction, or threats or declarations to that effect, in order to defeat the applicant's right to maintenance or alimony or the right of the child or children to maintenance, support and education. An application for writ of *ne exeat* shall also set forth sufficient facts to support a finding that a less drastic remedy would be ineffective.

(b) Notice. -- Actual notice of the hearing and copies of all pleadings and other papers filed to date in the action or to be presented to the Court at the hearing on the application for writ of *ne exeat* shall be served upon the adverse party or the adverse party's attorney of record, unless it can be satisfactorily shown by affidavit or otherwise under oath that such notice cannot be given in time or would defeat the purposes for which the writ is being sought.

(c) Execution. -- Upon execution of a writ of *ne exeat* the law enforcement officer shall forthwith bring the person before a Judge sitting in the Family Division.

(d) Judge in chambers. -- An application for writ of *ne exeat* shall be presented to the judge in chambers.